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ABSTRACT

This document presents the transcript of a hearing before the House Subcommittee on Education Reform about state and local level special education programs that work and federal barriers to innovation as part of efforts to reform the Individuals with Disabilities Education Act. Highlights of the testimony include: (1) progress in New York in increasing the high school graduation rate for students with disabilities and holding students and school systems accountable for academic achievement; (2) Florida's efforts to increase parental choice in the education of students with disabilities; and (3) efforts by individual school districts to improve academic achievement and reduce behavior problems and placements in alternative settings; and (4) the role of private school vouchers. Statements are included of Representative Michael Castle, Subcommittee Chairman; Representative Dale Kildee, Ranking Minority Member; Lawrence Gloecklerm, from the New York State Education Department; Diane McCaine, from the Florida Department of Education; Richard Schoonover, from the Bellevue, Nebraska, Public Schools; Sally Arthur, from Humble, Texas, School District; and Russell Skiba, from Indiana University and representing the Council for Children with Behavioral Disorders. Appendices include written statements by presenters and additional documents provided for the record. (DB)

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STATE AND LOCAL LEVEL SPECIAL EDUCATION PROGRAMS THAT WORK AND FEDERAL BARRIERS TO INNOVATION

HEARING

BEFORE THE

SUBCOMMITTEE ON EDUCATION REFORM

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, MAY 8, 2002

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HEARING ON STATE AND LOCAL LEVEL SPECIAL EDUCATION PROGRAMS THAT WORK AND FEDERAL BARRIERS TO INNOVATION

Wednesday, May 8, 2002
U.S. House of Representatives,
Subcommittee on Education Reform,
Committee on Education and the Workforce,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:00 p.m., in Room 2175, Rayburn House Office Building, Hon. Michael N. Castle [chairman of the subcommittee] presiding.

Present: Representatives Castle, Tancredo, Platts, Osborne, Kildee, McCarthy, Davis, Roemer, and Kucinich.

Staff present: Blake Hegeman, Legislative Assistant; Charles Hokanson, Professional Staff; Patrick Lyden, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Jo-Marie St. Martin, General Counsel; Heather Valentine, Press Secretary; Maggie McDow, Minority Legislative Associate/Education, Alex Nock, Minority Legislative Associate/Education; and Joe Novotny, Minority Staff Assistant/Education.

OPENING STATEMENT OF CHAIRMAN MICHAEL CASTLE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Chairman Castle. The Subcommittee on Education Reform will come to order. We are meeting today to hear testimony on how to reform the Individuals with Disabilities Education Act.

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Under committee rule 12(b), opening statements are limited to the chairman and the ranking minority member of the subcommittee. Therefore, if other members have statements, they may be included in the hearing record.

With that, I ask unanimous consent for the hearing record to remain open 14 days to allow members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record. Without objection, so ordered, and I will proceed with my opening statement.

Let me say good afternoon, first of all, to the most obliging group of witnesses we have ever had. They were in their seats and they were quiet, even before we started. That's a little bit unusual.

Welcome to everybody here to the next in our series on the reform and reauthorization of the Individuals with Disabilities Education Act.

Before we begin, I want to thank you witnesses, as well as the many parents, advocates, and educators joining us today in the committee room, and via live webcasting. Your feedback is important to shaping and continuing to shape any IDEA reform legislation that is reported by this subcommittee.

Nearly one year ago today, the House of Representatives overwhelmingly adopted H.R. 1, comprehensive education reform legislation designed to hold states and schools accountable for improving the academic achievement of our children. Then and now, it is important to note that our support for a system of education that leaves no child behind speaks not only to race, gender, or ethnicity - it speaks to all children, regardless of their individual challenges or abilities.

Today, despite IDEA's many successes, and 27 years after Congress guaranteed the right of students with disabilities to sit in regular education classrooms, too many disabled children drop out of high school. And too many lag behind their non-disabled peers.

While many dedicated professionals are working very hard to raise expectations and improve the quality of education for special education students, I am concerned that there are barriers to innovation and excellence in the federal law, and its accompanying regulations that may, inadvertently, prevent the very success that we all seek.

Instead of simply passing a reauthorization bill that continues the status quo, I am interested in doing what's right for our children with disabilities and their families. This includes learning what our states and districts are doing to improve the education of their special education students, and then thinking creatively about how we can help them move beyond simple compliance to real academic achievement.

Today we will hear about the progress the State of New York has made in increasing high school graduation rates for disabled students, and holding students and the state school systems accountable for academic achievement.

We will also learn how Florida has moved to increase parental choice in the education of disabled students so that parents can ensure their disabled sons and daughters are receiving a quality education.

Finally, we will hear testimony from two district-level special education administrators and a professor who will describe the innovative practices that their districts have implemented to improve academic achievement, and to reduce behavior problems and placements in alternative educational settings.

While some of these approaches will be controversial, they all deserve our attention, and it is my hope that what we learn today will spur discussion and bring fresh thinking to our examination of IDEA.

At the end of the day, there is no quick or easy way to meet the challenges of educating our disabled children better. Yet, if we are to be successful in our efforts to build on IDEA's commitment to access with improved results for children and families, we must do what we can to avoid the poisonous battles of the past. Only by working together, as we have on H.R. 1, can we hope to provide new opportunities for disabled children and more fully include them in all aspects of life.

In a moment, I will proceed with the introduction of our witnesses, but I will now yield to the distinguished Ranking Member of the subcommittee, Mr. Kildee, for any opening statement he may wish to make.

WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL CASTLE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX A

OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Mr. Kildee. Thank you very much. I am pleased to join Governor Castle at our latest hearing on reauthorization of IDEA. I found the testimony at past hearings on this topic very, very helpful and useful in our discussions.

Today's focus on reforms and strategies to improve the education of children with disabilities will help define our work on reauthorization of IDEA later this year. In fact, many of the most beneficial reforms to IDEA during past reauthorizations have been as a direct result of work at the state and local level, and input from teachers, parents, and administrators alike.

However, one aspect of today's focus, on private school vouchers for disabled children, causes me concern. Private school vouchers, whether for children with disabilities or children without disabilities, will only, I believe, exacerbate our efforts to ensure positive educational outcomes for children with disabilities. Instead of strengthening our education system and efforts to achieve results, children participating in a voucher program would lose the civil rights protections that IDEA affords. This means less accountability for the public dollars.

In addition, there is simply no need for a voucher program for disabled children. If a school district cannot serve a disabled child in a public school setting, a district can enroll a child in a private facility without cost to the parent. And under this situation, children maintain their protections under IDEA.

In short, voucher programs for disabled children will do nothing to strengthen our school system's effort to provide a free, appropriate public education.

In contrast, I believe there are numerous ways we can improve the educational experience and outcomes for children with disabilities. We need to look at creative means of increasing the graduation rate of children with disabilities. We need to examine the transition requirements of IDEA to ensure that disabled children can move on to work, or to post-secondary education.

In addition, we need to ensure that schools and teachers have the tools and knowledge to ensure safe and orderly schools. As part of any effort to ensure safe schools, I strongly believe that we cannot and should not cease services for children with disabilities.

Simply suspending or expelling students from school without support services or efforts to deal with the root causes of disruptive behavior, won't make our schools safer. Policies that permit ceasing educational support services transfer these problems from our schools to our communities, often exacerbating juvenile crime.

In closing, Mr. Chairman, I want to thank you for holding this hearing, and I look forward to hearing from our witnesses.

WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C. – SEE APPENDIX B

Chairman Castle. Thank you, Mr. Kildee. I appreciate your kind words and wisdom on this, as always. And we will now proceed with our witnesses.

Our first witness today - and I will introduce you all, so relax for a moment - our first witness today is Mr. Lawrence Gloeckler. Mr. Gloeckler has served as the Deputy Commissioner of the Office of Vocational and Educational Services for Individuals with Disabilities for the New York State Department of Education since 1989.

He has also served New York's Department of Education as the acting deputy commissioner of the Office of Elementary, Middle, Secondary and Continuing Education. Mr. Gloeckler has served on numerous committees and panels pertaining to special education and is immediate past President of the National Association of State Directors of Special Education. He holds a master's degree from Syracuse University.

Our second witness is Ms. Diane McCain. Ms. McCain is the Director of the Choice Office within the Florida Department of Education. Prior to assuming her current position, Ms. McCain was Public Information Director of the Charter Schools and Opportunity Scholarship program for the Florida department of education.

In addition, she served as Director of Communications and Consultant to the Chairman for the Coca-Cola Company for the 1996 Olympics. Ms. McCain has a bachelor's degree from Florida State University and is currently completing a law degree.

Dr. Richard Schoonover is our third witness today. Dr. Schoonover is the Director of Student Services for Bellevue Public Schools in Bellevue, Nebraska. He has also served Bellevue public schools as Director of Special Services and as Principal of CHAP School, a K through 12 program for students with mental disabilities. Dr. Schoonover earned a Doctor of Education degree from the University of Nebraska.

Dr. Sally Arthur is the Director of Educational Support Services for the Humble Independent School District - it is spelled H-u-m-b-l-e, if anyone wonders why I am asking - Humble Independent School District in Humble, Texas. She also has experience as the Director of Special Education for the Katy independent school district.

In addition to her school district duties, Dr. Arthur is the President-elect of the Gulf Coast Administrators of Special Education. Her Doctor of Education degree is from the University of Houston.

And our final witness for today is Dr. Russell Skiba. Dr. Skiba is Associate Professor in Counseling and Educational Psychology at Indiana University. A member of the school's psychology faculty, he has worked primarily in the areas of emotional and behavioral disorders and school violence, and teaches in the areas of school violence, zero tolerance, and cultural diversity.

Dr. Skiba has directed a number of federally funded research projects and published extensively in professional journals in the areas of school violence and equity in education.

Before the witnesses begin their testimony, I would remind the members that we will be asking questions of the witnesses after the complete panel has testified. In addition, committee rule 2 imposes a five-minute limit on all questions.

You probably know the ground rules. You have those little boxes in front of you that show green, yellow, and then red lights. For four minutes the green light is on, then for one minute the light is yellow to tell you it's time to wrap up, and when you get to red after your five minutes is up, you should complete your testimony. You will go in order, right down the line, and then we will go to questions and answers by those members who are present, or who may come wandering in.

STATEMENT OF LAWRENCE C. GLOECKLER, DEPUTY COMMISSIONER, OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES, NEW YORK STATE EDUCATION DEPARTMENT, ALBANY, NEW YORK

Mr. Gloeckler. Mr. Chairman and members of the subcommittee, I'm Larry Gloeckler, as you introduced me, and I just wanted to let you know my responsibilities with the education department including administering the state's special education program, the state vocational rehabilitation program and also independent living programs that are state funded.

And I really thank you for inviting me, and I consider it an honor to be able to provide testimony to you today.

I have been asked to speak to you about education reforms in New York State that have improved the quality of educational opportunity for students with disabilities, and barriers that may exist in IDEA implementing those reforms.

In order to stay in my five-minute limit, I'm not going to repeat what's in my testimony, I just want to let you know that our goals and accountability principles that we think have led us to be able to move towards our goals are stated in the testimony.

I have also included a paper on IDEA reauthorization I recently wrote for the Center for Education Policy. It's called, ``Time to Simplify and Focus on Performance," which I think, in a nutshell, describes my message.

But before I begin talking about just a few points I want to make, I first want to say that students with disabilities who, as you know, represent a very broad range of disabilities, also represent children who have substantial abilities.

When they are given access to high-quality curriculum and instruction and the appropriate supports, these students can perform at high levels - very, very often higher than adults have expected of them. And I say this, based on substantial data that we have collected and analyzed over a number of years, which I have also included in my testimony.

The two most important areas that I recommend you focus on in the reauthorization are strengthening performance accountability and strengthening those aspects of the law that can support improved student performance.

In 1997, you did the right thing. You began a shift in accountability for educational programs for these students from 25 years of process accountability built on elaborate paper documentation to accountability for education results. I urge you strongly to continue to move in that direction.

The data that I provided you in my written material documents both the successes that we are experiencing in New York, and areas where we clearly need to focus our attention. But most importantly, although not all the news is good news, we are now focusing on the right issues and we now can get to the resolution of performance problems where they exist.

As an example, in the four years since 1997, on our state exit test called Regents examinations, more students with disabilities are passing them today than were allowed to take them in 1997. In some areas, the number passing those tests is double the number taking those tests four years ago. And as you can see from the charts I have included for you, those are not small numbers.

This would not have happened, these students would have continued to be denied the opportunity to succeed at this level, if our state Board of Regents and if IDEA 1997 had not said, ''All students must have access to high standards."

Because of our shift to performance-based accountability, and again, the reinforcement that we received from reforms made to IDEA in 1997, we also now know some other important things.

For instance, we know that where children are placed makes a substantial difference in performance. We know that poverty has a direct effect on performance. We know that even in wealthy school districts, the children who are in poverty in those districts do not do as well, academically, as others.

We know that minority students placed in special education are performing at significantly lower levels than white students. And again, this is not all good news, but the good news is that we know what the problem is, and we know what we need to address.

Educational leaders must be accountable for all children, and the accountability must be about what is important, and that is preparing students to live independent, participatory, high quality lives - to be able to, as much as possible, move on to post-secondary education or meaningful jobs and careers.

In this reauthorization, I urge you to continue to strengthen performance accountability components and build in the necessary supports for states and locals to improve performance. Allow us to focus our resources on areas that clearly need improvement, rather than treating each procedure and process as equally important.

As I said, 1997 was a terrific start, I believe, in moving IDEA in the right direction. However, there is still much to do. We must begin to review IDEA to see what actually, within the procedures and processes and subsequent regulations, add value to educational performance and what does not.

We should remove those things which add no value, and allow the resources to be focused specifically on those which do.

As I mentioned, we have lots of additional data analysis about key performance indicators in our state that I would be happy to share with you, if you are interested. And after this testimony, I would be pleased to answer any of your questions. Thank you.

WRITTEN STATEMENT OF LAWRENCE C. GLOECKLER, DEPUTY COMMISSIONER, OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES, NEW YORK STATE EDUCATION DEPARTMENT, ALBANY, NEW YORK - SEE APPENDIX C

Chairman Castle. Thank you, Mr. Gloeckler.

Ms. McCain?

STATEMENT OF DIANE McCAIN, DIRECTOR, CHOICE OFFICE, FLORIDA DEPARTMENT OF EDUCATION, TALLAHASSEE, FLORIDA

Ms. McCain. Thank you, Mr. Chairman. We are very pleased to have this opportunity to share information about parent choice in education and Florida's McKay Scholarship Program for Students with Disabilities. On behalf of the thousands of students being served in both public and private schools through this program, I thank you for your attention today.

Florida's children, regardless of their family income, are assured of an education at public expense. Our state leaders believe that every child can learn, if given the opportunity.

In our state, public funding for services is not new. Families may choose to attend a private school, and no public support follows the child. Families may choose to attend a public school which is paid for entirely by public support.

For more than 15 years, school districts in Florida have been able to contract with private schools for services for students. We believe that school choice is a method for making our educators more accountable to parents in Florida. With the McKay program, our legislature has empowered parents to choose their children's schools. Parents are given flexibility, perhaps for the first time.

Before the McKay program, the decision regarding services was made predominantly by the school district. Children at risk, children in the juvenile justice system, and children with special needs have had the decision made by local school districts.

Over $40 million has been paid to provide services by contract to more than 8,000 students. With the McKay program, parents, not just school districts, also have an option.

Florida has made available two types of tuition vouchers for K through 12 students, the Opportunity Scholarships Program and the McKay Scholarships Program for children with disabilities. Today I have been asked to share specific information about the McKay program.

Children that are eligible for this program are public school students in grades K through 12 with disabilities. The parent of a public school student with a disability who is dissatisfied with the student's progress may participate. To alleviate confusion and misunderstanding, our legislature defined disabilities for the purpose of this program to include: mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospitalized or homebound, and autistic.

The choices parents now have are both public and private. For the first year, approximately 1,000 students participated in 139 private schools. For year two, 5,000 students are participating in more than 400 private schools. The majority of students are not severely disabled, and are in middle school grades.

The Department of Education mails parents of students currently receiving special education services a letter. This letter is provided in Spanish and English, and we have also added Creole this year. The letter serves to inform the parent that this program may be available to them. Included are a brochure and a toll free number for parents to use to obtain more information.

Calls to the parent information line have exceeded 30,000 calls in number. To serve students and process their registrations effectively, the Department has activated a toll-free line to serve districts and private schools, in addition to the toll-free line for parents.

The program began as a pilot in one school district. For the first fully implemented year, which we call year one, we believed that the popularity would continue and that taxpayers were strongly indicating a desire to have such a program.

To facilitate amendments and to make the law more user friendly during year one, parents and private school administrators met with legislative staff, district school personnel, and Department of Education administrators to determine how the implementation of the program could better serve students.

The group developed an action plan that served as a recommendation to the Florida senate. The legislature enacted many of the suggestions, and in year two we saw an increase in parent participation and private school participation.

The creation of the Choice office as a one-stop location for implementation, notification, and payment processing, has also provided a more streamlined approach to serving students, parents, and our local school districts.

We are fortunate working with this program because we get to hear the happiest of stories, when it comes to the program and students: Our parents and the schools, both public and private, do not hesitate to talk about the good things being accomplished, and the results they are witnessing.

And I am running out of time. I do want to share two stories with you, if I could. This one is about a child from Congressman Keller's district in Orlando, Florida.

The school admitted a middle school student who was identified in the public school system as Educable Mentally Handicapped. He could not read, nor did he have any math skills.

In addition, it was reported by the child and his parents that his teacher had verbally abused the child. Recognizing the extent of verbal abuse, the mother removed him from the public school system and brought him to the pathway school.

When he arrived, his mother's aspirations were for her son to be able to complete basic life skills, like reading road signs and filling out a job application. After several months of intensive encouragement, attention, and a new school setting, her son now not only reads, but he can also add, subtract, and multiply.

The administrator, the teacher, and the parents report that the student is a pleasure to have at school, and they are very pleased with his progress and the fact that they - and the school is pleased with the fact that they have accepted students in the McKay program.

We did have schools that were reticent about participating in this program. They did not know what to expect from these children.

And my time is up, but if you would like, you can ask me all kinds of questions when everyone else has finished.

WRITTEN STATEMENT OF DIANE McCAIN, DIRECTOR, CHOICE OFFICE, FLORIDA DEPARTMENT OF EDUCATION, TALLAHASSEE, FLORIDA - SEE APPENDIX D

Chairman Castle. Thank you, Ms. McCain. I see you picked up the trick of reading fast there, at the end.

Dr. Schoonover?

STATEMENT OF RICHARD SCHOONOVER, DIRECTOR OF STUDENT SERVICES, BELLEVUE PUBLIC SCHOOLS, BELLEVUE, NEBRASKA

Mr. Schoonover. Good afternoon, Mr. Chairman and members of the subcommittee. I am Richard Schoonover, Director of Student Services for the Bellevue Public Schools.

Bellevue Public Schools is the fourth largest school district in the State of Nebraska, and we are the proud home of Offutt Air Force Base and the headquarters of the United States Strategic Command.

Approximately 45 percent of our students are children of active duty personnel stationed at Offutt Air Force Base, and approximately 1,400 of our students, birth through age 21, are students with disabilities.

Bellevue Public Schools is proud of our special education programs, and the services we provide for our students. Our district is in the process of an ongoing restructuring of special education services, and we are redesigning these services to be better integrate their delivery in the general education classroom while still preserving the range of special education services from full-time general education placement to full-time special education placement, as appropriate for each student.

We believe strongly that the type and level of special education service should fit the needs of each individual student, yet all services should be delivered as close to the general education program as possible.

The Bellevue public schools have been involved in activities exploring the way to improve services and implement procedures which provide assistance to students prior to the need for verification. The district, with the assistance of the Nebraska Department of Education, has developed and implemented programs to assist students in this way.

Two examples. We had a Saturday school program for one of our middle schools, which provides middle school students, who are at risk of failing, additional academic and behavioral supports. The district also has a teacher training program for the elementary level that concentrates on literacy, reading, and language skills. The purpose of the training program is to provide teachers with additional teaching techniques to work with students who need additional help.

The district has integrated its funding from various sources—Title 1, comprehensive school reform demonstration project funding, the school district's general fund, and special education funding—to implement a restructuring project in four of our elementary schools that happen to be school-wide Title 1 buildings.

This restructuring process has assisted these schools and all the students in the school, including students with disability. We would like to continue our restructuring efforts, and expand to all buildings, both at the elementary and secondary level, and the goal of the district is to obtain funding which would provide for this flexibility to address the individual needs of each school.

During the next school year, the district will develop and implement a plan to integrate non-special education support services with special education support services at our elementary level. Our intent is to improve the services and to implement cost-effective and student-efficient services.

We will be designing and implementing an expanded student and teacher assistance team which will provide student assistance and teacher assistance for the purpose of intervening early in the child's life so that referrals for special education may not be needed.

The district is currently working with the Nebraska Department of Education to redesign and integrate our services for children younger than age five. Currently, the district provides preschool services funded by special education, Title 1, early childhood grants from the Nebraska Department of Education, and local district funds, and in cooperation with other school districts within Sarpy County, Head Start.

We are in the process of designing and implementing the integrated model, which will be a single program, birth to age five, but have different funding sources. Nebraska, as you may recall, implemented mandatory services from birth to 21 in 1978.

Some of the points we would make for the committee, we feel that the Individuals with Disabilities Education Act should encourage and facilitate the integration of funding sources to serve students with disabilities, should encourage integration of various funding sources, title 1, reform money.

We also would recommend that the IDEA should provide greater flexibility in the use of staff to meet the needs of students with disabilities, and we would certainly encourage the subcommittee to closely examine and monitor the issue of some of the rising costs within special education, such as medical costs. I think districts need greater direction and guidance in this particular area.

We also would encourage the Congress to have IDEA provide more guidance and direction as to when an independent evaluation is required within the school. And the last reauthorization went a long way in making some corrections and some improvements, and we certainly applaud those efforts.

The Bellevue Public Schools would be available to provide any assistance that you may need throughout the reauthorization. Thank you very much.

WRITTEN STATEMENT OF RICHARD SCHOONOVER, DIRECTOR OF STUDENT SERVICES, BELLEVUE PUBLIC SCHOOLS, BELLEVUE, NEBRASKA – SEE APPENDIX E

Chairman Castle. Thank you, Dr. Schoonover.

We will turn now to Dr. Arthur.

STATEMENT OF SALLY ARTHUR, DIRECTOR OF EDUCATIONAL SUPPORT SERVICES, HUMBLE INDEPENDENT SCHOOL DISTRICT, HUMBLE, TEXAS

Ms. Arthur. Good afternoon, Mr. Chairman, Congressman Kildee, members of the subcommittee. My name is Dr. Sally Arthur; I am the Director of Educational Support Services in Humble Independent School District, located in Humble, Texas.

We are a suburban school district in northeast Houston with an enrollment of 26,000 students. The demographics of my school district and my background are described in my written statement.

It is my pleasure to be here today. I am going to talk to you about three innovations that are working in my district: positive behavioral interventions and supports, curriculum-based measurements, and bilingual child study teams.

Research sought from universities can be a powerful catalyst for change when elements of school-wide, user-friendly, data-driven portions exist as a part of the project.

Positive behavioral interventions and supports are a system of clearly defined behaviors in all school environments that are taught and analyzed to measure effectiveness.

Consequences are consistent. Appropriate behavior is reinforced. The system addresses school-wide, classroom, and individual student progress. It instructs students in school-wide expectations. It doesn't focus on consequences, it focuses on positive behaviors.

Positive behavioral interventions and supports are an alternative to zero tolerance and punishment. Discipline referrals in Humble ISD have reduced, at the elementary level 44.2 percent, at the middle school level 3.7 percent, and at the high school level, 15.9 percent. These decreases have occurred over one year's time.

Another innovative program in our school district is curriculum-based measurement, which can accelerate learning for some, and distinguish between learning disabilities and teaching issues.

Curriculum-based measurement collects data on reading, writing, and/or math across short time intervals. Assessment probes measure growth, resulting from intensive interventions. The probes take two to three minutes to administer. In this way, responsiveness to the intervention can be determined quickly and over short periods of time.

Initial results, using curriculum-based measurement, are promising. Individual case studies on two students in Humble ISD will be provided as a supplement to this testimony. These students were not referred to special education assessment as a result of curriculum-based measurement. Of these, one student made three years' growth in reading since November, and the other student's intervention was provided by the parent.

The final program I wanted to talk to you about is the Bilingual Child Study Team. This team reduces the use of special education for culturally and linguistically diverse students. Bilingual Child Study Team is a district-wide team that problem solves around referrals to special education for those who are culturally or linguistically diverse. It determines interventions, refers to special education, or both.

Bilingual Child Study Team has increased appropriate referrals to special education from 79 percent to 97 percent in Humble ISD. When a referral is questionable, the student participates in bilingual curriculum-based measurement. Our school district is currently well below the state average in identification of students who are bilingual and identified as special education.

These innovations have led to positive results. For instance, Kingwood High School - a high school in Humble ISD - students are performing at extraordinary levels. While our regular education students pass the exit level assessment in the areas of reading, writing, and math at the rate of 99 percent, more than 97 percent of our special education students pass those same tests.

98.4 percent of our special education students take these exams. I attribute this to high standards set for all students and support that we provide in the general education setting.

At Shadow Forest Elementary School, we have 17 students with autism. Of these, only two need the majority of their day in special education. The rest enjoy services and a range of educational settings that have, over time, contributed to some students moving from entering school as non-verbal to full inclusion and participation as general education students. I attribute these results to positive behavioral interventions, as I described earlier.

There are good things happening in public schools today. There are school districts and schools that work. Things can always be better. There are services to improve, and children and families to serve. As innovative as these things are, legislative change could improve things dramatically.

Simplify. Look at the State of Texas' discipline chart, based on the federal regulations from 1999. I think you have some copies of them. Look at how complex the discipline regulations are. What this system does is it freezes educators from taking positive actions, and confuses the issue of positive support with negative consequences.

Be sensible. Schools are better able to focus on innovation when freed from due process liabilities rising from minor procedure requirements. IEP teams should have problems presented to them prior to parents being able to file for due process.

Fund IDEA, at the 40 percent level - IDEA part C needs increases for early intervention. That time is where trends can be reversed. Increase funding for part D, and require practical application of the research funded.

And expect. Set high standards for all students. Expect performance from the schools.

Thank you very much for your time.

WRITTEN STATEMENT OF SALLY ARTHUR, DIRECTOR OF EDUCATIONAL SUPPORT SERVICES, HUMBLE INDEPENDENT SCHOOL DISTRICT, HUMBLE, TEXAS – SEE APPENDIX F

Chairman Castle. Thank you for your time, Dr. Arthur, we appreciate it. And we will be back to you shortly.

Dr. Skiba, you are the final witness, sir.

STATEMENT OF RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL

DISORDERS

Mr. Skiba. Good afternoon, Mr. Chairman and members of the subcommittee. My name is Dr. Russell Skiba. I am honored for this opportunity to speak before the committee today.

In addition to my faculty duties at Indiana University, I am also Director of the Safe and Responsive Schools Project, about which I am going to speak to you today. I am representing the Council for Children with Behavioral Disorders, a national organization representing children with emotional and behavioral disorders and their families.

And if possible, I would like to have included in the record three helpful fact sheets on these issues by CCBD.

Chairman Castle. Without objection, they will be included.

DOCUMENTS PROVIDED FOR THE RECORD BY DR. RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS – SEE APPENDIX G

Mr. Skiba. Thank you. My statement today can be summarized by three key findings of the Safe and Responsive Schools Project.

First, we have the knowledge and the skill to make our schools effective instructional environments, with a minimal use of suspension and expulsion.

Second, there is, in fact, no evidence that suspension and expulsion positively contribute to school safety or improved student behavior. And they may, in fact, have unintended negative consequences.

And third, we can have safe and well-disciplined schools under current law without significantly amending the IDEA.

Over the past three years, the Safe and Responsive Schools Project has worked with local schools in two states to develop a comprehensive approach to school discipline and school violence prevention. Our schools form teams that conduct needs assessment and use those results to develop comprehensive school safety plans that they then implement the next year.

We are extremely encouraged by the outcomes after the first year of implementation. Among our five pilot schools in Indiana, out-of-school suspensions showed a decline, ranging from 40 to 60 percent. These gains were extended to students of disabilities as well. In one school that is documented here, suspensions dropped from 39 for students with disabilities to 0 the following year.

I would like to highlight one school that is highlighted in the written testimony, the experience of Owen Valley High School. The team, in its first year, identified as one of its most serious problems the tremendous number of referrals to the office. Students were literally lined up in chairs outside of the administrative office, waiting to see the disciplinarian.

In response, the school developed an innovative new program called the Intervention Room, described in the written testimony. What you have in Table 1 is a summary of those results. After 1 year of implementation, the total number of suspensions at that school was down over 50 percent, expulsions were down 40 percent, the number of drop-outs was down 20 percent, and the number of suspensions and expulsions for students with an IEP were down by 73 and 100 percent, respectively.

We believe that these data show that there is nothing in current IDEA disciplinary policies that prevent schools from continuing to improve the safety and disciplinary climate of our schools, and that positive discipline and academic excellence go hand in hand.

This year, Owen Valley High School was one of six schools in the nation that won the prestigious New American High School Award from the U.S. Department of Education, in recognition of its reform efforts and its increased academic excellence.

These findings are also consistent with the review of IDEA disciplinary provisions that I was commissioned to write for the ``Rethinking Special Education" conference held here in Washington. The major findings of that paper were first, there is little or no evidence that the disciplinary provisions of IDEA significantly limit the ability of administrators to discipline students. The GAO found, for instance, that 75 percent of school principals across the country believe that the disciplinary provisions of IDEA have a positive or neutral impact on their ability to discipline students.

Second, there is no evidence that special education students are given greater leeway in their behavior as a result of IDEA disciplinary provisions.

And third, and perhaps most importantly, there is no evidence that suspension and expulsion make a positive contribution to school safety or improving student behavior. Rather, the evidence suggests that suspensions and expulsions are correlated with school drop-out rates and a high rate of repeat offending, suggesting that students do not learn from suspension and expulsion. In addition, there is very high disproportionality by race in suspension and expulsion rates that cannot be explained by the behavior of those students.

We have the knowledge to find effective disciplinary alternatives for all students. Panels of national experts in school violence prevention have been convened by Congress, the U.S. Departments of Education and Justice, the White House, and the Surgeon General. All of those panels have consistently recommended approaches such as violence prevention and improved behavior management for teaching students to solve their interpersonal and personal problems.

In conclusion, I would make three recommendations. First, to increase the investment in IDEA for developing and implementing effective research-based practices related to behavior. There is no reason why every school in the country cannot have these kind of results, and the kind of results described in Humble, with sufficient support for research and for training in best practices in preventing school disruption.

Second, educate stakeholders in effective and ineffective methods of discipline. If we are serious about the call of no child left behind, to make sure that our schools only research-based practices, we would reduce our uses of ineffective practices like suspension and expulsion, and turn instead to instructional strategies for school discipline.

And finally, work with schools across the nation to ensure the uniform implementation of the Individuals with Disabilities Education Act. Perhaps we could consider some kind of national technical assistance that would enable us to work with schools as problems arise.

I know I am over time; I would just like to finish up my concluding comments here. The experience of Owen Valley High School and the other schools participating in the Safe and Responsive Schools Project has shown us that there is no inherent conflict between continuing services for students with disabilities and preserving the safety of our schools.

Schools that are most effective in preserving safety and improving student behavior have learned to use empirically validated prevention practices that seek to keep all students in school, and teach both disabled and non-disabled students what they need to know to avoid violence, to get along with their peers, and to succeed in school and society.

Thank you for allowing me this opportunity to speak.

WRITTEN STATEMENT OF RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS – SEE APPENDIX H

Chairman Castle. Thank you, Dr. Skiba.

Before I yield to myself for questioning, I would just like to make a couple of general comments, based on what we have heard here today.

First, I was pleased to hear - actually, almost all of you - mention at some point the reauthorization of 1997. I know that Mr. Gloeckler and Dr. Schoonover, in particular, cited it as an improvement in terms of what we have done with IDEA.

For those of us who worked on that reauthorization, we are pleased to hear that. That was a bit of a difficult labor, just as this reauthorization will be, as well. And our goal is to build even more on some of the reforms we made in 1997, if we possibly can. But it was nice to hear that you believe there have been improvements in special education because of the 1997 reauthorization. I haven't heard that a lot, actually, people talk about IDEA.

The second thing is that even in areas where we might have improved, perhaps in discipline, et cetera, there are still ways we can improve. I don't think we have reached the ultimate point in any of this. And so when I ask questions, it's not necessarily picking on a particular area, it's just that I want to continue to try to improve IDEA.

I mean, my judgment is that the paperwork demands, the time demands on the IEPs and some of the lack of information which is out there are very distracting. I agree with you, Dr. Skiba, when you mentioned at the end the uniform implementation, and some sort of technical assistance.

We've just passed an education research bill here, in the House of Representatives last week, which we're now urging the Senate to take up. We feel that, you know, we could be doing a lot more with education research than we are presently in this country, and that had to be a very bipartisan bill that Mr. Kildee and I and a lot of others around here were strongly supportive of, and hopefully that can help to do that.

In fact, if I have time, I will probably ask a question of several of you who have been involved with these in the schools, about what you use for sources of information.

But with that, let me yield myself five minutes and run through some questions with you. And let me start with you, Dr. Arthur. Just looking at this chart, which you have in front of you and which I have here, which - and I don't begin to suggest to you I have read it, or would understand it if I did read it immediately - but it's a discipline flow chart for students with disabilities.

What should we do? Should we change the law? Dr. Skiba says we can be doing better at the local level, in terms of disciplining with fewer suspensions and expulsions, et cetera, but I don't want people who are supposed to be teaching kids with disabilities to be spending all their time worrying about flow charts and paperwork, for example.

I know that's sort of a broad question, but do you have any immediate suggestions? Remember, our goal is to improve this legislation.

Ms. Arthur. Right. You know, it's been my experience, working with administrators - because we trained our administrators on this particular flow chart - and working with administrators, they find it very complex, and difficult to manage.

The decision point at every point is a place where they can make an error. It's not problematic until they really get to that 10-day bar, and then it becomes very problematic.

My belief is that, you know, we can provide a free, appropriate public education for our kids with disabilities, and should be providing it, really, from the time they start being disciplined. You know, in a perfect world, I do believe that we can provide for students, really almost exclusive to this. I think pieces of this are very important, like the functional behavioral assessment and the IEP process, to do that.

I do think that we need some consistent uniformity in our discipline chart. I do think there is a very disjointed appearance in public schools of some students that get one treatment, others that get others, kids that perhaps have manipulation as a reason for their behavior, they learn to manipulate the system. It's problematic.

In Texas, we do provide services from the get-go, when they are disciplined, and I think we can do that fairly reasonably. We have a limitation of three days' suspension, they're not allowed to be out of school for a long period of time. There are some constraints that you can put on administrators.

And I really do think that all kids are entitled to that. I don't think expelling any student to the street is appropriate. So, I think many of the entitlements that special ed kids have, generally, kids should have too.

Chairman Castle. Thank you. I know it's difficult. Let me ask, I guess, Mr. Gloeckler and Dr. Schoonover, perhaps I'll ask this question, too, and this is, in your direct, you know, in-the-line-of-fire-type positions dealing with this particular subject, where do you get your information from? I mean, do you just develop that information in terms of New York and Nebraska, or do you look to other states? Is there any kind of an outlet to organizations, anything that helps with this?

We get a lot of complaints about IDEA. I mean, it does many good things, don't get me wrong, and I am one of those who believes that if you take children with disabilities and give them an opportunity, you might see some great abilities, as you said, Mr. Gloeckler. But my concern is that I don't get the sense that there is a good information base in terms of what's working or what's not working. And quite frankly, as we go to mark up this legislation, I am concerned that we don't really have the information in hand that we need in order to make the right decisions to help all of you with respect to educating children with disabilities.

So, are there organizations for this, or do you just depend upon who you know in the community, within your states? How does this work?

Mr. Gloeckler. In New York, there are many organizations that we can reach out to. At the national level, there is the Council for Exceptional Children, the National Association of State Directors of Special Education, there are clearinghouses on many of the issues.

However, we have, for years -.

Chairman Castle. Any of them useful?

Mr. Gloeckler. Yes.

Chairman Castle. I'm serious. I'm not being facetious or sarcastic.

Mr. Gloeckler. Yes, I'm very serious. In fact, I think particularly the work that has been done on positive behavioral supports is a good example of how research is being disseminated and put in practice throughout the nation.

In our state, for instance, we're using folks from the Midwest to help train our teachers and administrators. And there are networks that identify where things are working, and word gets out. I have, for instance, been able to go to many states in the last few years, and talk about the performance-based approaches that we're using in New York.

The one thing that I would suggest to you, however, is that, when research is funded, particularly directly, towards issues around students with disabilities and other areas of disability, there usually is very little money applied to dissemination of that research.

So, there are certain areas where the word gets out, and there are organizations which push certain issues. But most of the research you have to really search for, and I think that's a problem.

Chairman Castle. That's something I would like to address, too. Dr. Schoonover, can you answer that as well, and then my time is up.

Mr. Schoonover. You know, the different organizations would be the same. But I think one of the things we would recommend be done in this reauthorization of IDEA is that the IDEA contain a requirement - or at least a strong suggestion - at the federal level, that the federal level provide regional workshops for special educators, both administrators and teachers and parents, and focus those workshops on innovative practices, bring the results of research together, and share that information with local administrators.

And in addition to that, the U.S. Department of Education should not only share information better, but share options and techniques that school districts can use to integrate funding. You know, don't just come out and say, ``This is a good program," but say, ``Now, if you really want to do it, this is the way to mix and match your funding to do that," including state, local, and federal dollars. So, help with the implementation.

I guess my approach would be that the answer to the question isn't, ``you can't do that." The answer is, ``Okay, let me help you do it." And that should be the relationship between the federal and the local level. It's going to take a partnership as we work with students.

Chairman Castle. Thank you, Dr. Schoonover. Mr. Kildee?

Mr. Kildee. Thank you, Mr. Chairman. The whole question of cessation of education services has been a question before this committee for a long time, and a very serious concern of mine.

Dr. Skiba, could you elaborate on what steps schools should take to make the environment safe and conducive to learning, and can you tell us more about some schools out there that are doing this effectively?

Mr. Skiba. Certainly, Representative Kildee. We have tended, I think, in the light of the tragic school shooting incidents of the last few years, I think - if I can start, actually, with the previous question about what's working and not working, our knowledge base in the schools, in terms of dissemination about dealing with student behavior, is not all that it could be. And frankly, in many of our schools, we're just unprepared for how quickly they had to act in light of the school violence that occurred in our schools.

Over time, we have learned that the best approach is not through reactive approaches like zero tolerance, or even implementing school security measures, but a comprehensive approach to school violence prevention that, first of all, focuses on the entire school climate, that we put in place instructional approaches, like conflict resolution, or bullying prevention, that teach all students alternatives to violence for solving their problems.

At the second level, that we identify early on kids who may be at risk. In three-quarters of the school shooting incidents, as analyzed by the Secret Service, someone knew that that child was at risk, and perhaps had even been told that the child was going - had seen an early warning sign. So we need to have a better understanding of early identification and of ways of getting services to children who are at risk.

And then finally, a continuum of effective responses. It's not that we should never remove a child from school, but in fact, the overuse is counterproductive, as a number of the witnesses have said, and schools that are effective find a range of effective consequences, like restorative justice, that can pull our kids with challenging behavior back into school and keep those kids in school.

My approach on this is that that type of approach can short-circuit a lot of the issues we face - a lot of the conflict we face - around the discipline of students with disabilities.

There is no inherent conflict between the provisions of IDEA 1997 and discipline in our schools if we define discipline as the proactive and preventative solution of behavior problems. There is only a conflict if we over-rely on suspension and expulsion.

And given that suspension and expulsion really don't have much research support as effective approaches, it makes much more sense for us to look at this type of comprehensive approach across both general and special education. I hope I have answered your question.

Mr. Kildee. You have. You have been very helpful. This has been a question before this committee for quite some time, and there has been some division within the Congress.

Mr. Skiba. Yes, I am aware of that.

Mr. Kildee. And within the committee. So, it has been helpful. Let me address a couple of questions to Dr. Schoonover and Dr. Arthur.

Are your school districts accessing Medicaid to assist with the IEPs of children? And if so, does that reimbursement come to your school districts, and can we do anything in the reauthorization of working even with other committees in this Congress to assist you in accessing Medicaid?

I ask that because some states got very, very active in accessing Medicaid – for example, Illinois and my own state of Michigan - and had to return some of Medicaid money. Yet, it is a legitimate source of help for these children. Could you two respond to that?

Ms. Arthur. Well, we are accessing money through our school district. We have changed service providers because of some difficulty with that, but we have increased our funding significantly in the last few years, and are able to use some of those funds.

It does not nearly cover the cost of some of the services that we're having to provide for children that have high medical needs. And the medical things that are going on in public schools today are now really significant.

So, it has helped and assisted, and I think districts are very glad to access those funds. But in the same sense, we would like more funds, because there are really high-cost children in the public schools nowadays.

Mr. Kildee. Dr. Schoonover?

Mr. Schoonover. In our district, we access Medicaid to assist with the funding of speech therapy, physical therapy, and occupational therapy. In the State of Nebraska, that money actually goes to the state, and then it's an offset against our state reimbursement.

Mr. Kildee. It's an offset?

Mr. Schoonover. It's an offset against our state reimbursement. And we get a percentage of it for administrative impact to that.

There is another Medicaid program which supports the administration of Medicaid, and currently our district is not accessing that. Some school districts in the state have just started to access that particular money.

Because the first portion of that money is an offset, it generates more money for the state. The state has used that money to fund services coordination for our zero to five population. So it has been beneficial to the states for their purposes.

Mr. Kildee. If I could just follow through with one question. Actually, the cost of those special needs children with medical problems really lies with you, does it not?

Mr. Schoonover. Yes, it does. It goes back to the school district, and we're finding that, as I think most school districts are finding, that it's not a huge number of students. The number is small, but it's the complexity. It's not only the direct medical services that are complex, but it's just the implementation of those services in a school environment is complex.

It's an area in which I think most school districts would appreciate some guidance from the federal level, and some assistance - not in trying to figure out how not to do something, that's not our issue. Our issue is working together to come up with an efficient and effective way of implementing services for students. We all care very deeply about that.

Mr. Kildee. Maybe we could address that offset question and see if some of the money could flow directly to the school district.

Mr. Schoonover. Good.

Mr. Kildee. Thank you very much.

Mr. Schoonover. You're welcome.

Chairman Castle. Thank you, Mr. Kildee. Mr. Osborne?

Mr. Osborne. Thank you, Mr. Chairman, and thank you for being here today. We appreciate your testimony.

I would like to start out with Dr. Skiba. I have been involved with a young person in a mentoring relationship. And that young person had been suspended twice, for a week. And it's kind of a catch 22. He then is absent, so then he gets to the point where there is no way he can pass his classes because of absences, and so he is not doing well.

So I tend to agree with you. I don't see suspension as being a very good answer in these cases. But still, we have cases where there are some specific behaviors that occur, and what is an administrator to do? And so I am going to shoot three of them at you, and maybe you can start, and anybody else who has an idea.

Let's say someone consistently talks back to a teacher. And they have been warned, and you know, they keep doing it. What do you do?

Secondly, let's say somebody shows up and they are high on drugs or alcohol, and it's pretty obvious.

Or, thirdly, let's say there is a fight in the school. It isn't knives or guns, but it's a fistfight, and nobody gets hurt badly, but there is a fight. What do you do?

I mean, you're talking about some alternatives to suspension, and I guess what I'm interested in is what specific behavior modification can you use in those cases that does the job?

Mr. Skiba. I'm hoping I can have everyone else's five minutes to cover this.

[Laughter.]

Mr. Skiba. I think in general, I think we can find ways of dealing with those things in various - from various points of the three levels that I was talking about. And oftentimes, we can scale the severity of the behavior with where we need to be, in terms of those three issues of creating the climate, early identification, or effective responses.

When we talk about an issue like talking back, there is clearly an instructional approach that we can use. It doesn't make much sense for us to put a kid out of school for a disrespect issue. That's probably the kind of thing that we can deal with with conversation, with instruction, with other behavioral approaches.

As we get into fighting, we may -.

Mr. Osborne. Let me interrupt you.

Mr. Skiba. Okay.

Mr. Osborne. Now, I understand you're saying a conversational approach. Can you be more specific? I mean, are you talking about a group therapy session? Some structured conflict resolution class? Or what would you do?

Mr. Skiba. No, probably not a group therapy session. Some sort of discussion with a school counselor. We may have more structured behavioral approaches that deal with compliance training. There is actually a whole literature out there on compliance training that provides a positive - instead of punishing a child for non-compliance, we reward the child for compliance, and gradually, over time, shape that.

So there is a whole literature out there. I would be happy to talk with you about it in more detail -.

Mr. Osborne. I would like to see that. I appreciate it. Go ahead.

Mr. Skiba. I think as we get to more complex issues like fighting, we have to involve more levels of our continuum. Certainly the fact that - if we look at some studies on conflict resolution, when they interview children, they find that 85 percent of all kids in schools believe there is no other way to solve their problems than through fighting.

So clearly, at the overall level, we have a big job in front of us in educating our children that there are alternatives to fighting; things like conflict resolution can do that.

But also, we need to protect the safety of our schools. And I am by no means saying that there are no times in which we don't take a kid out of school if we need that for safety. But again, there are interventions like restorative justice that we can use to handle the kids who are fighting.

And we have to sort of look at two levels here. I was on a statewide telecast one time with the Council for Children with Behavioral Disorders. And after talking about all of the behavioral principles, somebody called in and said, ``Well, what do you do if a kid throws a chair?"

Well, you know, my answer was ``duck." But you know, our options are really pretty limited if we wait until that serious incident takes place to take action. If we notice that we have serious problems of fighting in the school, then we take action before that to address kind of the root causes of fighting in our school, and seek to address those to decrease the overall incidence of fighting.

I think drug and alcohol problems become a very significant problem for our community. One of our schools, frankly, a couple of our high schools have really solved a lot of their other problems with safe and responsive schools, but they are still very much wrestling with drug and alcohol problems in their rural areas.

And I think we have to make a very serious effort to work with juvenile justice authorities, of working with community mental health. It really requires a more community-based and whole community effort to deal with some of those causes, because we're not simply going to be able to deal with that within school when there are lots of other community factors impinging on that.

I know I haven't begun to answer your question here, but -.

Mr. Osborne. That's a good start. Thank you.

Mr. Skiba. Thank you.

Chairman Castle. I guess that is all we are going to do for now, is just begin to answer the question with the time limits we have. Mrs. Davis?

Mrs. Davis. Thank you, Mr. Chairman. Thank you for being here. Congressman Kildee addressed one of the major issues that has always been of concern to me, having been on a school board for nine years in San Diego, California, and that is the one of the medical issues that arise.

In addition to being able to access certain funding streams, have you considered, thought - and this is to any of you - a whole different way to do that? I mean, should school districts have - or, you know, health and human services, fund the medical needs of kids in school? And this is all children, because we know that many, many children go to school - their primary care giver is the school house.

And it's just a big issue, in addition to special education. Do you have some other ways that we might address this issue? Anybody thought about a different mechanism, different structure?

Ms. Arthur. Well, we have thought about different mechanisms. We don't really know - and this may just be ignorance - how to access those funding streams as school districts.

Certainly, we are all looking at - we, in Humble, right now are looking at - the possibility of school clinics on the school campuses for children that have health needs, and families that have health needs, and whether there are some ways that you can access other funding streams, for example, for mental health issues, that could possibly bring wrap-around services to children.

We have not taken that step yet. It requires a lot of connections with outside resources and funding streams, and we just haven't really figured it quite out. We do have a contingent of people from our district right now going to Atlanta to talk with a parent who has done a lot of work with alternative funding streams by the name of Sue Smith. She has done a lot of work in the State of

Georgia.

And so, we're trying to figure out how to do it right now, but we have to seek that information. It is not readily available to school districts.

Mrs. Davis. Did you have a comment?

M.. Schoonover. Just one comment. In our district, some of our medical services are funded with Medicaid, and some of them we fund. And from a local administrative perspective, I haven't been able to figure out the difference between the two situations. I am sure there is, and I guess it's probably due to a lack of understanding of the Medicaid rules and how those rules are applied.

So, one thing that would help would be to simplify that, and actually communicate how those rules apply, because quite honestly, I have not figured out the difference between the two situations.

Mr. Gloeckler. Yes. From a state perspective on that issue, one of the recommendations I made in my paper, which I didn't talk about in my oral testimony, is that we know there is tremendous research on the improvements of student performance when health and mental health services are readily available to schools, whether in schools or as a collaboration with a community.

There has been, I think, virtually no significant work done at the federal level - because I know you're asking how can you help - to clarify what the barriers really are to pooling funding, to collaboration that's easy and quick.

And that would be an area, I think, that's really ripe for study as IDEA is reauthorized, because much of what IDEA calls for today, as we keep getting more and more - as there is more and more improvement and more and more awareness of the capabilities of people with disabilities - is to deal with the more complex issues. And I think that's an area which we just haven't addressed yet, and we really welcome your support and we would be glad to give you any kind of advice that you need, specifically, on that.

Mrs. Davis. Okay. Thank you. I think that would be really helpful. And it is just clear to me that, even though you may be able to access some of those funding streams, at least the districts that are represented here don't.

I think we have seen some situations where school districts have. San Diego has made some attempts, and has been successful in some ways, and they have done some very integrative kinds of services.

But the other thing that we all need to recognize is that school health centers are very controversial in communities. And even though they bring great benefit to a community, they also create a lot of problems. And sometimes it's hard, politically, for people to move forward with that.

I think the other issue that would be helpful to us in helping to get a handle on, as you suggest, trying to reclarify, redefine the free and public education, appropriate education for children. And I think I look to you in some ways to help with that, as well.

I think that it would be important for Congress to do that, so that we don't leave any child behind, but at the same time, we might acknowledge that there have been some real serious problems that have been an issue for public schools, and certainly the encroachment issue is a major one, in terms of all funding that school districts receive.

Is that - just - I know my time is up, but can you just - maybe there is a concern or two there, or if there is one issue, particularly, that we should look at in this regard of redefinition, what would that be?

Mr. Gloeckler. Well, let me speak to that. One of the things that we find - the strategy that has been used so far, to attempt to bring clarity to who does what, which is really what you're talking about, I think, is agreements.

And what we've found is agreements work when everybody is willing to agree. And they also work best when there is little debate over resources. But agreements really have not been an effective strategy in the long term. So, the encroachment occurs because the people who are supposed to agree to help agreed, but never helped.

Again, I think those two issues are connected. If we can clarify who is responsible under what conditions, and how to pool funds, which are targeted to the same people sometimes, just for slightly different reasons, we might be able to, I guess, mitigate the need to worry too much about redefining FAPE, because I think most of it has to do with the inability to bring the other systems, including education, together in a real collaboration.

Mrs. Davis. Thank you. Thank you, Mr. Chairman.

Chairman Castle. Thank you, Mrs. Davis. Mr. Tancredo is next.

Mr. Tancredo. Thank you, Mr. Chairman. Ms. McCain, by far the most exciting, I think, development - as far as I'm concerned, anyway, and as far as I've been able to observe in this whole area - is what is happening in Florida with the McKay Scholarship Program. It is bold; it is challenging a lot of assumptions, of course, and, therefore, it challenges a lot of powerful special interests. And the fact that you have been able - that those in the State of Florida who are concerned about children have actually been able - to overcome the objections and the obstinacy of organizations who are more concerned about the system than they are about children, is to your credit.

I am interested in, among other things, the - you state in your testimony that "To alleviate confusion and misunderstanding, our legislature defined disabilities for the purpose of this program to include" - and then you listed them. Does that indicate that there was no state - there was no other definition, there was no other legal definition in place before that?

Ms. McCain. No. In other parts of the statute, the definition was provided. However, when parents would refer to the McKay program and the law that provides that program, many parents believe that their - as all parents do - that their child is very special. So they often, even a child without special needs, or without disabilities, the parent believes that perhaps their child might be eligible for this program, which was not the case.

It was very disappointing for parents, but it was a clarification thing, and it really did eliminate some confusion to actually put that in this particular part of the law.

Mr. Tancredo. I see. And specific learning disabilities, specific learning disabled, is that defined any better, beyond that, in the law?

Ms. McCain. No, I do not believe so in the rest of our statutes. However, what would not be eligible would be a child, perhaps, that has broken their leg and perhaps receiving services at home. That child is temporarily disabled, but is not learning disabled. Does that answer your question?

Mr. Tancredo. Yes, thank you. I am interested in knowing the structure of most of the private schools to which these children go, especially in regards to their general education offering, as opposed to special education offering.

Are most of the schools to which these children go, most of the private schools, providing general education and they have a special ed. program like any other school but it, for whatever reason, offers something to the parent that they think they cannot -.

Ms. McCain. The majority of the schools, yes. They provide general education with a specialty. And then we do have some highly specialized private schools.

And you will notice that, while our numbers have increased greatly, I do think that we're going to, within the next year or so, more or less cap out, if you will, for existing private schools that are established in the state.

We have more than 2,000 private schools in the state. Clearly, not all of them are able to provide special services, nor are they interested in doing so for this amount of funding. But we have schools that perhaps serve just autistic children, or they have a particular specialized area, and are known for that.

And then we have schools that have a religious basis, and they have perhaps specialized instructors and teachers on the campus.

Mr. Tancredo. And did I understand you correctly that the capping effect that would occur is a result of supply, not demand?

Ms. McCain. Yes. Mm-hmm, yes. Many of the schools that initially participated - and I mentioned one that was - or, I didn't get to that point, where there was a school that the board - a private school that expressed a concern as to whether or not the program would be around for any length of time.

Mr. Tancredo. Yes, it's in your -.

Ms. McCain. They wanted to, you know, have these children, for a multitude of reasons, dealing with the government. I mean, there were a number of questions in the minds of that school board's members.

They were encouraged by a particular parent to accept one child. That child did so well - and I don't mean just in terms of progress, but they were pleased with the way everything worked out, the child's progress being a large part of that - that they have now expanded their services. Coming into the third year, they are going to have 43 students, I believe.

So some of the schools have actually expanded their space availability, where before, they may have been a little concerned about participating or not.

Mr. Tancredo. Have you been able to recognize any attempt on the part of the public schools from which these children came, for instance, to revise their program, or in any way adopt -.

Ms. McCain. Yes. Yes.

Mr. Tancredo. Okay.

Ms. McCain. We are in the process of surveying parents. It is likely that some evaluations will be completed by early fall, certainly by the end of the year, on what would motivate a parent to make a change, whether it's to another public school setting, or to a private school.

We want to know for a multitude of reasons, but also because the school districts want to know so that they can make some changes and improvements. Part of the program's success, I think -.

Mr. Tancredo. And I think that is so important for people to understand and hear here, that the benefit eventually, is to the child, to all children.

Ms. McCain. Yes.

Mr. Tancredo. In fact, public schools may change whatever they are doing in order to accommodate that, and isn't that what exactly we're all about? Well, anyway, I am sorry, our time is up.

Ms. McCain. No, that's wonderful. Would you like to come home with me? But that said, teachers also are reporting - public school teachers - we have children of public school teachers in the McKay program, but they are reporting that they are being ``listened to" more directly now. Because what they have to say, and perhaps what they had been saying - and it was falling perhaps on deaf ears because of financial constraints, or whatever - is now being paid attention to and perhaps resulting in some changes.

The program's success includes this data that we're going to get, in terms of the evaluation and what we're seeing.

The fact that the majority of the children are in middle school grades, as opposed to early grades, reflects that parents have ``given a particular school a chance" to educate the child, and then have made a conscientious decision to leave the public school system, or to remain in the public school system, but just go for another choice.

And that's another thing that sometimes gets overlooked when people oppose a program, or particularly the McKay program - it's about public school choices as well. And that has been, I think, very important to parents, many of whom had applied for waivers and had been unable to get them, and now are able to -.

Mr. Tancredo. Get them.

Ms. McCain. - just make another public school choice.

Mr. Tancredo. That's great. Thank you.

Ms. McCain. Thank you.

Mr. Tancredo. And congratulations to you.

Ms. McCain. Thank you.

Mrs. Davis. Mr. Chairman, may I just ask very briefly of the witness?

Chairman Castle. Mrs. Davis, certainly.

Mrs. Davis. I am sorry, I do not quite understand what the - you mentioned the level of funding. Could you clarify that for me?

Ms. McCain. Yes. We refer to the McKay program as a scholarship program, as opposed to a voucher program, although it is a check that is actually made payable to the parent.

The amount of that scholarship tuition check is equal to what the child generated in the state funding amount. So we call it the FEFP, for the Florida Education Finance Program, and that is what follows a child. Construction dollars don't follow the child, many other funding sources do not follow the child. But the per-student funding does follow the child, either to another public school or to a private school.

Mrs. Davis. And what is that in Florida generally?

Ms. McCain. Well, it varies from county to county, or from district to district. We finance the children based on their level of disability that we classify, and a matrix.

And a child that is perhaps not severely disabled is at what we call the low end. It's about $4,800.

Mrs. Davis. And?

Ms. McCain. And a child at a high end would be around $15,000, and could go as high as $20,000. But we have less than one percent of those children participating in this program. Many of them are already served under a third-party contract with the district and a private institution or school setting.

Mrs. Davis. Thank you.

Chairman Castle. Thank you, Mrs. Davis. I believe all the members who want to participate have, and we're going to have a vote fairly soon. I want to ask just a couple of more questions, and maybe Mr. Kildee will, but if the votes begin we will have to break it all up.

But let me ask you, Mr. Gloeckler, a couple of questions. First of all, do you think we are over-identifying children? Do you think we are, by not providing services in early childhood, getting children in school who have learning problems that are not true disabilities? With regard to what we're doing when people get into the IDEA system, do we have an over-identification problem going on that we need to be focused on?

Mr. Gloeckler. In New York State, we have been very concerned about a pattern that makes one suspicious of over-identification in that, for many, many years, the percentage of students in the total enrollment placed in special education was growing every year.

We instituted in the mid-1990s - added in the late 1990s - a program that was targeted to prevention of support services in the general education environment. And lo and behold, we have now seen a leveling off of referrals and placements in special education. As long -.

Chairman Castle. Now, repeat that. What did you do?

Mr. Gloeckler. We instituted - the name - we all have our own names for these programs, as you know, but ours is called Education-Related Support Services Aid, and what it is is aid targeted at support services and general education for those students that might have difficulties that were being referred to special -.

Chairman Castle. Is it usually aimed at younger children, or is it sort of factored over all the grades?

Mr. Gloeckler. Generally, the students that benefited from that were in the elementary schools. But it could be used elsewhere.

But as a result of that and other efforts that we have made as part of the goals I laid out here, we have seen a flattening of special education placement percentages. But we do see in our urban districts, however, and our districts with lower resources, higher rates of classification.

Chairman Castle. But the over-identification problem of minorities, which we've heard -.

Mr. Gloeckler. Absolutely, and I have data in our testimony that shows you where we are in New York on that issue.

But I would say to you that as long as there is a disproportionate placement of minorities in special education, we have an over-identification problem. And I think that is tied to resources, the models that the urban districts still use, and the fact that in many districts, students are referred to special education because there is no other option.

So, I think it's really critical that we keep focusing on building the general education supports at an early age.

Chairman Castle. Now, my final question on this line is this - for the kids who are receiving special education services, what is your percentage of kids who go back into the mainstream of education? Are you working on that, or is that somebody nobody pays attention to? How are you doing?

Mr. Gloeckler. Again, it is one of our specific goals. We call it declassification, or returning to a supported general ed environment. At the preschool level, that percentage has grown up to 19 percent. That percentage of students are being declassified when they move into the school's general education system, so that is positive.

In our state, virtually no student gets declassified when they're identified in school age, and the classification rate is as low, I believe, as three-and-a-half percent, which we're very concerned about.

Chairman Castle. Okay. Thank you. And I will ask one final question of Dr. Schoonover. You may not have an answer to this, but I'm concerned about the individualized education program. I mean, that is somewhat like Dr. Arthur's chart. I mean, there are a whole huge number of hours - we have had other testimony on this.

Any ideas, any specific thoughts of how to manage that? I'm not suggesting it's not needed, but I would also suggest that perhaps in a bureaucratic, regulatory way, that we have sort of overdone it in some instances. Do you have any thoughts about that?

Mr. Schoonover. Yes. We would like to see the IEP return to being an instructional document. Over a period of years, the IEP has started out as an instructional document, and then it became a combination of an instructional document and a compliance document.

We would recommend that you return the IEP to being an instructional document. We understand there has to be a compliance document, and I would suggest that if there is a need for a compliance document - which there is - that we look at a different way of doing that, maybe looking at a different document all together, and perhaps tying that to the three-year re-evaluation cycle, so that compliance is an ongoing process that you review every three years, and the IEP, again, sticks with an instructional approach.

So, we would like to see, really, a return to its intended purpose, which was instruction.

Chairman Castle. Okay. Let me turn -

Ms. Arthur. Mr. Chairman, may I -

Chairman Castle. I'm sorry, were you -

Ms. Arthur. May I make a comment?

Chairman Castle. You certainly may.

Ms. Arthur. You know, one of the things I think that's really critical to understand about that discipline chart is it really removes flexibility from the hands of administrators.

If you look, for example, when Mr. Osborne asked the question about alcohol and drugs, there is the automatic implication that you send a student to a discipline alternative education placement. People don't even consider that there is any other option. So I do think that there needs to be some sort of remedy to this complicated process because it is very inflexible, and very difficult to implement.

Mr. Skiba. May I -.

Chairman Castle. You're going to have to be brief.

Mr. Skiba. I felt remiss in not mentioning to Mr. Osborne that there are a lot of resources out there. If the committee would consult our website that is in the testimony, we have a resource link there that has - should have - resources for addressing all of those things.

In general, though, I think that the answer that Dr. Arthur talks about, not understanding that there are a lot of options, is a critical one in our schools right now. There are options like the ``Tough Kid Book" for dealing with these problems of non-compliance. Mendler and Curwin have a wonderful book called ``Discipline with Dignity."

What is important is that we begin to look at the training mechanisms that might be inherent in IDEA. We are beginning to focus on early intervention in reading, and that is a wonderful thing that the Congress is beginning to consider.

We should also, perhaps, consider training for our teachers in appropriate methods of behavior management - in providing them these options so that they don't have to rely on exclusionary options as much, once they know how to deal with these problems.

Chairman Castle. Thank you, Dr. Skiba. Mr. Platts wanted one minute, and then Mr. Kildee will take whatever time he needs, and we will wrap it up.

Mr. Platts. Thank you, Mr. Chairman. I want to thank all of you. Although I am coming in late, I appreciate the wealth of knowledge and the statistics and things you shared in your testimony.

I had just one question, Ms. McCain, on the McKay Scholarship Program. I understand that there is a lawsuit that's been brought on the non-special-ed -.

Ms. McCain. The opportunity scholarship program.

Mr. Platts. But none has been brought on the McKay Scholarships?

Ms. McCain. No, we have 100 percent happy parents.

Mr. Platts. And the way they are administered is - I mean, there are different qualifications - that you have to be an IDEA student to apply for a McKay Scholarship, but the funding -

Ms. McCain. Well, the major difference between the two scholarship programs, or voucher programs, is eligibility. For a child in McKay, the child does have to be a special needs student and be receiving, for the prior school year, special ed services and have an IEP that's been written for the child.

For the Opportunity Scholarship Program, it has nothing to do with the individual child and has everything to do with the public school's performance.

Mr. Platts. Okay.

Ms. McCain. And if a school receives a failing grade for two out of four years, then the children that are assigned or attending that school are eligible.

Mr. Platts. Is there any difference in what's required of the school, as far as accepting students?

Ms. McCain. Yes. The private schools that participate in the Opportunity Scholarship Program do have to accept the children on a random basis, and I will speak to how that differs in more detail with the McKay Scholarship Program, and I will be quick about it. The tuition is set at what we call the FTE, or the individual student allocation.

There is no supplemental payment that can be made by the parent, so choices are somewhat limited by private schools that will accept that voucher.

Mr. Platts. That's the McKay?

Ms. McCain. No, that's in the Opportunity Scholarship Program.

Mr. Platts. Okay.

Ms. McCain. In McKay, parents can supplement.

Mr. Platts. Okay.

Ms. McCain. And often, they do not need to, however. And we do encourage the private schools, while they are not to discriminate - we don't want them accepting a child they cannot serve.

And we intensely work with parents, as do the local school districts, to let the parents know what is available in the public school system and in the private school system, as well.

Mr. Platts. Has there been any difficulty of parents with the McKay Scholarships wanting to get into a certain school that is serving their student's - their child's - needs, and they feel the school has not been fair in the application process, or the review of accepting their -

Ms. McCain. We haven't had that happen yet. The biggest obstacle initially was finances. Often a parent may have a child that qualifies for a $4,800 payment, and they are picking a school with a tuition of $15,000. The state will not pay the difference.

However, what has happened is we have had a number of other funding sources, private funding sources, through organizations that have provided that supplement.

Mr. Platts. Great. Thank you very much. Thank you, Mr. Chairman.

Chairman Castle. Thank you, Mr. Platts. I would now yield to Mr. Kildee for any final statements, questions, or whatever he wishes to -

Mr. Kildee. Well, I thank the people who testified today. The third bell is about to ring, we have to go over to vote. But this has been a very, very helpful hearing, and I appreciate you, Governor, holding this hearing.

Chairman Castle. Thank you, Mr. Kildee. We only get - Republicans only get two bells, the Democrats get three. I'm jealous.

Let me thank all of you as well. We do appreciate you being here today; we always know it's a sacrifice to come here. Your testimony, the written testimony, will be, obviously, perused by the staff, and if you have any further thoughts afterwards, please feel free to contact us.

We plan, some time before this year is over, to be marking this legislation up and going forward. We will be having some additional hearings, but it has been very valuable to have all of you here, and we thank you. We all have to run out the door, or we would go down and shake your hand. But we do thank you and appreciate your being here. Thank you.

DOCUMENTS PROVIDED FOR THE RECORD BY DR. RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS – SEE APPENDIX I

We stand adjourned.

[Whereupon, at 3:30 p.m., the subcommittee was adjourned]

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN MICHAEL CASTLE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Statement of the Honorable Michael N. Castle
Chairman, Subcommittee on Education Reform

"State and Local Level Special Education Programs that Work and Federal Barriers to Reform"

Good afternoon. Welcome to the next in our series of hearings on the reform and reauthorization of the Individuals with Disabilities Act. Before we begin, I want to thank our witnesses as well as the many parents, advocates and educators joining us today in the committee room and via live webcasting. Your feedback is important to shaping -- and continuing to shape -- any IDEA reform legislation that is reported by this Subcommittee.

Nearly one year ago today, the House of Representatives overwhelmingly adopted H.R. 1, comprehensive education reform legislation designed to hold states and schools accountable for improving the academic achievement of our children. Then and now, it is important to note that our support for a system of education that 'leaves no child behind' speaks not only to race, gender or ethnicity - it speaks to all children, regardless of their individual challenges or abilities.

Today, despite IDEA's many successes, and 27 years after Congress guaranteed the right of students with disabilities to sit in regular education classrooms, too many disabled children drop out of high school. And too many lag behind their nondisabled peers.

While many dedicated professionals are working very hard to raise expectations and improve the quality of education for special education students, I am concerned that there are barriers to innovation and excellence in the federal law -- and its accompanying regulations -- that may inadvertently prevent the very successes that we all seek.

Instead of simply passing a reauthorization bill that continues the status quo, I'm interested in doing what's right for our children with disabilities and their families. This includes learning what our states and districts are doing to improve the education of their special education students and then thinking creatively about how we can help them move beyond simple compliance to real achievement for their students.

Today we'll hear about the progress the State of New York has made in increasing high school graduation rates for disabled students and in holding students and the state's school systems accountable for academic achievement.

We'll also learn how Florida has moved to increase parental choice in the education of disabled students so that parents can ensure their disabled sons and daughters are receiving a quality education.

Finally, we'll hear testimony from two district-level special education administrators and a professor who will describe the innovative practices that their districts have implemented to improve academic achievement and to reduce behavior problems and placements in alternative educational settings.

While some of these approaches will be controversial, they all deserve our attention. And, it is my hope that what we learn today will spur discussion and bring fresh thinking to our examination of IDEA.

At the end of the day, there is no quick or easy way to meet the challenges of educating our disabled children better. Yet, if we are to be successful in our efforts to build on IDEA's commitment to access with improved results for children and families, we must do what we can to avoid the poisonous battles of the past. Only by working together, as we have on H.R. 1, can we hope to provide new opportunities for disabled children and more fully include them in all aspects of life.

In a moment, I will proceed with the introduction of our witnesses, but I will now yield to the distinguished Ranking Member of the Subcommittee, Mr. Kildee, for any opening statement he may wish to make.

APPENDIX B - WRITTEN OPENING STATEMENT OF RANKING MINORITY MEMBER DALE E. KILDEE, SUBCOMMITTEE ON EDUCATION REFORM, COMMITTEE ON EDUCATION AND THE WORKFORCE, U.S. HOUSE OF REPRESENTATIVES, WASHINGTON, D.C.

Remarks of
The Honorable Dale E. Kildee
State and Local Special Education Reform
May 8, 2002

GOOD AFTERNOON, I AM PLEASED TO JOIN GOVERNOR CASTLE AT OUR LATEST HEARING ON REAUTHORIZATION OF IDEA. I HAVE FOUND THE TESTIMONY AT PAST HEARINGS ON THIS TOPIC ENORMOUSLY USEFUL AND AM LOOKING FORWARD TO OUR DISCUSSION ON THIS IMPORTANT TOPIC.

TODAY'S FOCUS ON REFORMS AND STRATEGIES TO IMPROVE THE EDUCATION OF CHILDREN WITH DISABILITIES WILL HELP DEFINE OUR WORK ON REAUTHORIZATION OF IDEA LATER THIS YEAR.

IN FACT, MANY OF OUR MOST BENEFICIAL REFORMS TO IDEA DURING PAST REAUTHORIZATIONS HAVE BEEN THE DIRECT RESULT OF WORK AT THE STATE AND LOCAL LEVEL AND INPUT FROM TEACHERS, PARENTS AND ADMINISTRATORS ALIKE.

HOWEVER, ONE ASPECT OF TODAY'S FOCUS, PRIVATE SCHOOL VOUCHERS FOR DISABLED CHILDREN, CONCERNS ME GREATLY. PRIVATE SCHOOL VOUCHERS, WHETHER FOR CHILDREN WITH DISABILITIES, OR CHILDREN WITHOUT DISABILITIES WILL ONLY EXACERBATE OUR EFFORTS TO ENSURE POSITIVE EDUCATIONAL OUTCOMES FOR CHILDREN WITH DISABILITIES.

INSTEAD OF STRENGTHENING OUR EDUCATION SYSTEM AND EFFORTS TO ACHIEVE RESULTS, CHILDREN PARTICIPATING IN A VOUCHER PROGRAM WOULD LOSE THE CIVIL RIGHTS PROTECTIONS THAT IDEA AFFORDS. THIS MEANS LESS ACCOUNTABILITY FOR PUBLIC DOLLARS.

IN ADDITION, THERE IS SIMPLY NO NEED FOR A VOUCHER PROGRAM FOR DISABLED CHILDREN. IF A SCHOOL DISTRICT CANNOT SERVE A DISABLED CHILD IN A PUBLIC SCHOOL SETTING, A DISTRICT CAN ENROLL A CHILD IN A PRIVATE FACILITY WITHOUT COST TO THE PARENT.

UNDER THIS SITUATION, CHILDREN MAINTAIN THEIR PROTECTIONS UNDER IDEA. IN SHORT VOUCHER PROGRAMS FOR DISABLED CHILDREN WILL DO NOTHING TO STRENGTHEN OUR SCHOOL SYSTEMS' EFFORT TO PROVIDE A FREE APPROPRIATE ***PUBLIC*** EDUCATION.

IN CONTRAST, I BELIEVE THERE ARE NUMEROUS WAYS WE CAN IMPROVE THE EDUCATIONAL EXPERIENCE AND OUTCOMES OF CHILDREN WITH DISABILITIES. WE NEED TO LOOK AT CREATIVE MEANS OF INCREASING THE GRADUATION RATE OF CHILDREN WITH DISABILITIES.

WE NEED TO EXAMINE THE TRANSITION REQUIREMENTS OF IDEA TO ENSURE THAT DISABLED CHILDREN CAN MOVE ON TO WORK OR POSTSECONDARY EDUCATION.

IN ADDITION, WE NEED TO ENSURE THAT SCHOOLS AND TEACHERS HAVE THE TOOLS AND KNOWLEDGE TO ENSURE SAFE AND ORDERLY SCHOOLS. AS PART OF ANY EFFORT TO ENSURE SAFE SCHOOLS, I STRONGLY BELIEVE THAT WE CANNOT AND SHOULD NOT CEASE SERVICES FOR CHILDREN WITH DISABILITIES.

SIMPLY SUSPENDING OR EXPELLING STUDENTS FROM SCHOOL WITHOUT SUPPORT SERVICES OR EFFORTS TO DEAL WITH THE ROOT CAUSES OF DISRUPTIVE BEHAVIOR WON'T MAKE OUR SCHOOLS SAFER. POLICIES THAT PERMIT CEASING EDUCATIONAL AND SUPPORT SERVICES TRANSFER THESE PROBLEMS FROM OUR SCHOOLS TO OUR COMMUNITIES, EXACERBATING JUVENILE CRIME.

IN CLOSING MR. CHAIRMAN, I WANT TO THANK YOU FOR HOLDING THIS HEARING AND LOOK FORWARD TO WORKING WITH YOU ON REAUTHORIZATION LATER THIS YEAR.

THANK YOU MR. CHAIRMAN.

APPENDIX C - WRITTEN STATEMENT OF LAWRENCE C. GLOECKLER, DEPUTY COMMISSIONER, OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES, NEW YORK STATE EDUCATION DEPARTMENT, ALBANY, NEW YORK

U.S. House of Representatives
Committee on Education and the Workforce:
Subcommittee on Education Reform

Testimony by:

Lawrence C. Gloeckler
Deputy Commissioner
New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities

May 8, 2002

Executive Summary

The New York State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has adopted a vision that students with disabilities will leave school prepared to live independently; enjoy self-determination; make choices; contribute to society; pursue meaningful careers; and enjoy integration in the economic, political, social, cultural and educational mainstream of American society. To accomplish this goal the State Education Department adopted the following goals for reform of the special education system:

- ☐ Eliminate unnecessary referrals to special education.
- ☐ Assure that students unnecessarily placed, or who no longer need special education services, are returned to a supportive general education environment.
- ☐ Hold special education services to high standards of accountability to improve results for students with disabilities.
- ☐ Assure that students with disabilities are educated in settings with their non-disabled peers to the maximum extent appropriate to their individual needs.
- ☐ Provide mechanisms for school districts to develop or expand support and prevention services.
- ☐ Assure that school personnel and families have the knowledge and skills that enable them to effectively assist students with disabilities in attaining high standards.

In order for these goals to become reality, a strategic agenda has been established which includes students with disabilities in all aspects of education reform. The following are recommendations which we believe are essential to assuring that students with disabilities reach high standards and are given full opportunity to live successful adult lives.

Students with disabilities must have access to the general education curriculum and have the opportunity to reach high standards.

- All students must be included in all systems of accountability for student results.
- Accountability must focus on key performance indicators.
- Data must be collected on key performance indicators and disseminated widely in plain language to stakeholders and the public at large.
- Resources must be targeted to areas of need based on key indicators.
- Monitoring and oversight for program delivery at both the federal and state levels must be allowed to focus on the mechanisms for improving outcomes for students, rather than devoting such extensive time and resources to the less significant but numerous process requirements.
- There is substantial research that shows that availability of health and mental health services to schools has a positive, sometimes dramatic, effect on key performance

indicators. We must resolve any federal statutory issues that continue to create age-old funding disputes and allow for quick and easy program collaboration and pooled funding.

- Prevention and intervention services must be established and aligned so everyone in need has access to them.
- Teacher preparation program content must be infused with greater emphasis on academic achievement and performance based accountability approaches.
- There is much room for consolidation of process accountability measurements (for example, planning and reporting requirements at the state and local levels).
- New requirements and approaches cannot be piled on top of existing ones; they must be in place of some of the existing requirements and approaches.

The following written testimony expands upon several aspects of this reform agenda. Also attached is a paper recently included in a document published by the Center on Education Policy titled, *A Timely IDEA: Rethinking Federal Education Programs for Children with Disabilities*, which describes broader recommendations for the reauthorization of IDEA.

Testimony to House Subcommittee on Education

Numerous federal and State reports support the need to improve the education system to create better results for students with disabilities. There are substantial numbers of students who are identified as disabled because they have not previously received proper academic support. Students are often identified as learning disabled because they have not been effectively taught the core skill of reading. More minority children continue to be served in special education than would be expected from the percentage of minority students in the general education population. Many students with disabilities do not have opportunities to learn with their nondisabled peers. We need to break the wall between general education and special education and view education as a continuum of interventions.

In 1995, the New York State Board of Regents and State Education Department embarked on a reform agenda to improve educational achievement for all students. High standards were established, progress on the standards was to be measured and reported, and districts were required to provide academic intervention services, where adequate progress was not demonstrated, to assist all students in achieving these standards.

New York State's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) crafted a vision that students with disabilities will leave school prepared to live independently; enjoy self-determination; make choices; contribute to society; pursue meaningful careers; and enjoy integration in the economic, political, social, cultural and educational mainstream of American society. To accomplish this goal the State Education Department adopted the following goals for reform of the special education system:

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- ☐ Assure that students unnecessarily placed, or who no longer need special education services, are returned to a supportive general education environment.
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- ☐ Assure that students with disabilities are educated in settings with their nondisabled peers to the maximum extent appropriate to their individual needs.
- ☐ Provide mechanisms for school districts to develop or expand support and prevention services.
- ☐ Assure that school personnel and families have the knowledge and skills that enable them to effectively assist students with disabilities in attaining high standards.

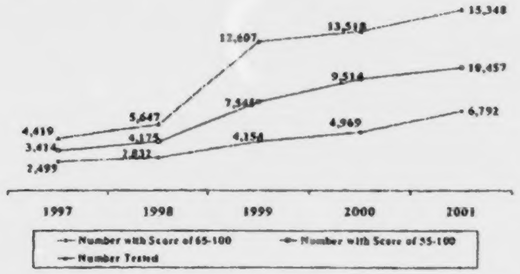
These concepts proved to be fully aligned with the discussions leading up to the reauthorization of the Individuals with Disabilities Education Act (IDEA) in 1997. The revised federal law placed increased emphasis on the following critical elements that we believe have a significant impact on the achievement of successful outcomes for students with disabilities:

- Access to the general education curriculum:

As academic standards are being raised in New York State and all across America, the negative impact of a separate special education system on student performance is multiplied. A unified educational system is essential if students with disabilities are going to have the opportunity to succeed both on the high stakes assessments often linked to high school graduation and in meeting the adult demands of the twenty-first century. This means that students with disabilities must be exposed to the breadth of the general education curriculum from their earliest years. The IDEA 1997 included a very appropriate emphasis on the requirement that all students with disabilities have access to the general education curriculum.

What happens when students with disabilities are given the opportunity to participate in general education courses? Several years ago in New York State, the Board of Regents revised graduation requirements to require that all students participate in the highest level academic courses in order to receive a regular high school diploma. Currently in New York State, students must take and pass the required course work and five Regents examinations. These examinations measure the attainment of 27 learning standards. The Board of Regents was concerned that the students in special education had not been exposed to Regents or standards level coursework, so they devised a unique phase-in safety net for this policy. During the phase-in period, school districts were required to provide access to Regents level curriculum for students with disabilities and give them an opportunity to take the Regents examinations. However, if they were unable to pass those examinations they would continue to be eligible to earn a local level diploma if they had completed all required course requirements and passed the somewhat less demanding Regents Competency Tests. As a result, we have seen a dramatic shift in the rate of access to Regents level courses and an equally dramatic shift in the participation and passing rates for students with disabilities on the Regents examinations.

Regents English Language Arts Examination -
Since 1997, there has been a 247% increase in the number of students with disabilities tested. Of the students tested, 68.1% scored 55-100.



Source: OLAP File 4/5/02 Public Schools

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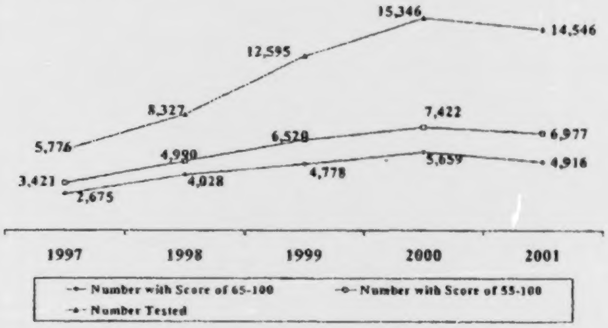
Regents Sequential Mathematics-Course I Examination* - Since 1997, there has been a 152% increase in the number of students with disabilities tested. Of the students tested, 48% scored 55-100.

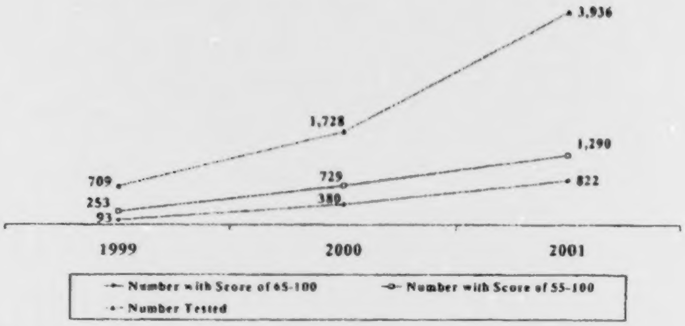


*Also see Results for 2000 and 2001 Math A Examination

Source: OLAP File 4/5/02

Public Schools New York State Education Department Office of Vocational and Educational Services for Individuals with Disabilities, April 2002

Regents Math A Examination* -
32.8% of the students with disabilities who took the Math A exam passed with a score of 55-100.

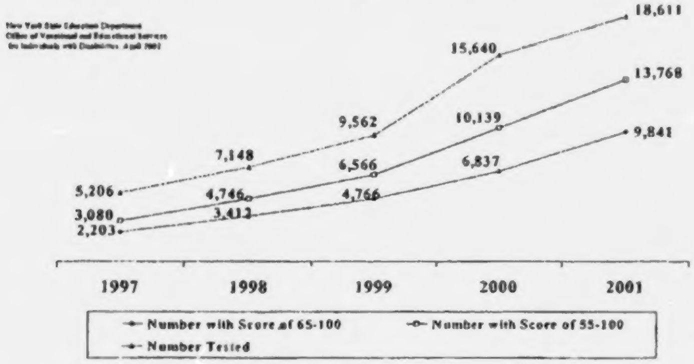


*Also see Results for Regents Examination in Mathematics, Course I.

Source: OLAP File 4/5/02

Public Schools New York State Education Department Office of Vocational and Educational Services for Individuals with Disabilities, April 2002

**Regents Global Studies* and Global History and Geography Examinations -
Since 1997, there has been a 258% increase in the number of students with disabilities tested. Of the students tested, 74% scored 55-100.**

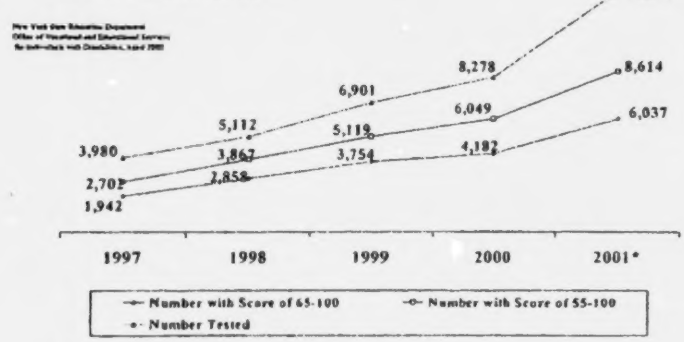


* The Global History and Geography examination replaced the Global Studies examination in 2000. The numbers for 2000 include both examinations.

Source: OLAP File 4/5/02

Public Schools

**Regents U.S. History and Government Examination -
Since 1997, there has been a 226% increase in the number of students with disabilities tested. Of the students tested, 66.5% scored 55-100.**



* Numbers for 2001 reflect the administration of the old and revised U.S. History and Government examination.

Source: OLAP File 4/5/02

Public Schools

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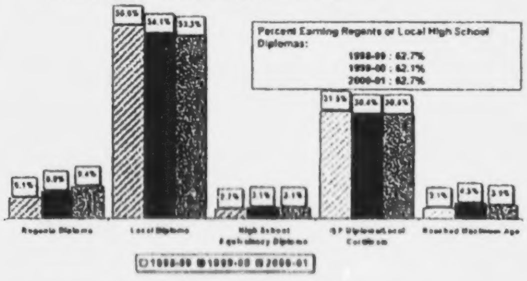
These results clearly reflect the fact that it was not the ability of students with disabilities that denied them access to these highest level courses but a lower level of expectation on the part of the educational decision makers. Once access was ensured, many students with disabilities have demonstrated that they are capable of mastering the highest level general education curriculum.

62.7% of students with disabilities who completed high school earned a Regents or local high school diploma*

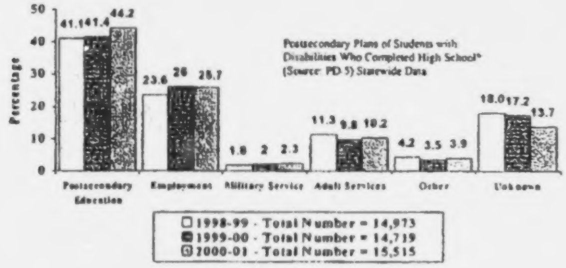


*Note: These percentages include only students with disabilities who completed high school. Students who dropped out are not included.

Data are as of March 14, 2002

In addition, and perhaps most remarkable, the expectations of students are changing as their educational experience has become more challenging. Almost 45% of students with disabilities exiting high school in New York State are now planning to go on to a postsecondary educational experience.

Of the students with disabilities who completed high school, 44.2% had plans to pursue postsecondary education.



*Plans of students with disabilities who dropped out are not included in these calculations.

Data are as of March14, 2002

- Least Restrictive Environment (LRE) - Access to the general education environment

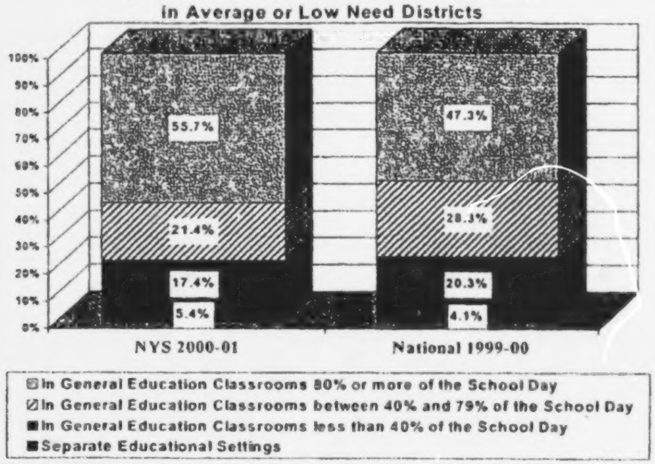
If access to the general education curriculum is the key to successful performance and long term positive outcomes, where is this access most likely to occur? The answer is in the general education environment. The knowledge base of general education content area teachers and the technology and equipment that are the foundation of general education instruction must be made available to students with disabilities. These resources are generally not available in segregated special education placements. However, the answer is not the abandonment of special education and the wholesale return of students to the general education classroom. Meaningful integration into the general education environment will only be possible if there is a strong, successful general education environment and if we integrate and embed special education into that environment. The tremendous assets of personnel, methodological innovations and numerous support services that have always represented what is best about special education must be intertwined with their general education counterparts. This marriage must occur at the earliest levels of preservice training within the institutions of higher education and must continue in general education buildings and classrooms.

A major paradigm shift evident in the IDEA 1997 was the requirement that any IEP team justify removal from every aspect of the general education environment as compared to the previous standard that appeared to start with the assumption that the student would not be included. In other words, the burden is now on the district to demonstrate that integration is not possible rather than on the student demonstrating that it is possible.

In New York State, we have traditionally far exceeded the national average for the percentage of students placed in special education over 60% of the day as well as for students placed in totally segregated settings. Several policy initiatives have been implemented, including greatly increased public attention to placement data, the setting of regional target benchmarks for redirecting student placements and the awarding of federal discretionary funds to assist districts in new program development. The results have indicated a shift in location of special education services, with the exception of our high need urban areas, where there remains a continued over-reliance on special class and special school placements.

New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities, April 2002

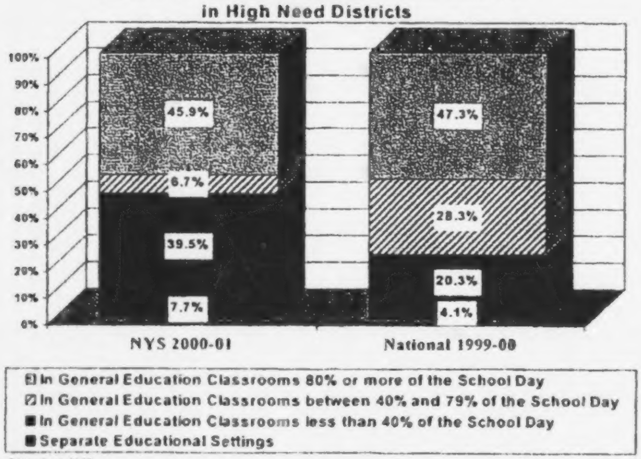
Percent of School-Age Students with Disabilities
(Ages 6-21) by Types of Educational Settings
in Average or Low Need Districts



Data are as of March 14, 2002

New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities, April 2002

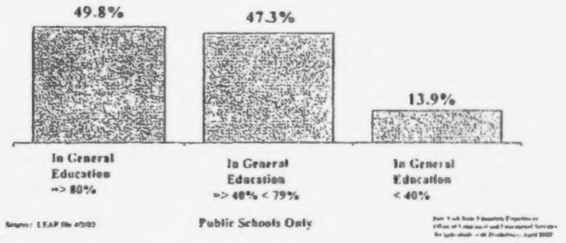
Percent of School-Age Students with Disabilities
(Ages 6-21) by Types of Educational Settings
in High Need Districts



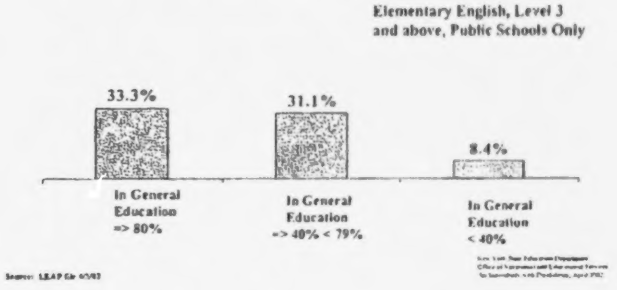
Data are as of March 14, 2002

How important is the location of special education service provision? We have only just begun to analyze the correlation between placement and student outcomes. However, recent data from New York State indicate that the performance of students who participate in the general education environment for at least 40% of the day perform at a much higher level than those who are removed for over 60% of the day to receive their special education services. On the charts below, scoring at Level 3 or above reflects the attainment of all the appropriate learning standards for that grade level, Level 2 represents partial attainment, and performance at Level 1 indicates that none of the grade level standards have been mastered.

Elementary Mathematics, 2001
A greater percentage of students with disabilities who attended General Education classrooms 40% or more of the school day scored at Level 3 or above.



Elementary English Language Arts, 2001
A greater percentage of students with disabilities who attended general education classrooms for 40% or more of the school day scored at Level 3 and above.



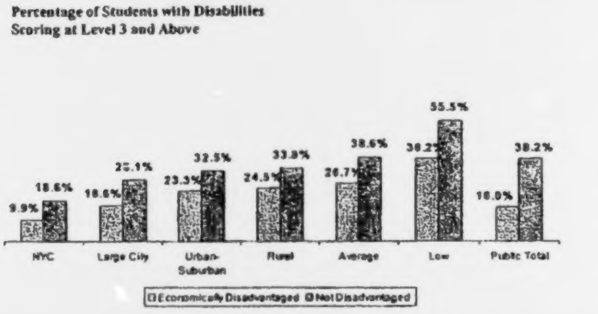
While we recognize that a small percentage of students with disabilities have needs for an intensity and uniqueness of service that cannot be met in the general education environment, we must continue to minimize that number and to maximize the supports available within general education in order to meet the broadest possible range of academic and behavioral needs.

- Data Collection and Accountability for Student Outcomes and Performance

New York State strongly supports the increased accountability measures imbedded in the IDEA 1997. Parents and students impacted by the IDEA do not have as their primary concern a district's full compliance with the law. Their primary concern is with the achievement of successful outcomes. It is only when we measure, collect, disseminate, disaggregate, analyze and make decisions based upon those outcomes that the impact of the IDEA becomes meaningful. Not only do all parents now have a right to be informed of their child's performance with the same frequency and across the same measures as their non-disabled peers but schools must now examine and treat with equal seriousness the progress of all their students. In New York State, performance measures regarding students with disabilities are included: on school report cards; in calculations to determine the need for a local assistance plan; in identification of Schools Under Registration Review (the state's process for identifying and assisting low performing schools); in determining which schools are furthest from the standards and in determining whether a school is making adequate yearly progress. Poor student performance must be addressed through school improvement plans.

New York State has collected and analyzed data on special education students' achievement for many years. The level of our analysis has improved each year revealing more information on root causes of poor achievement and the effect of special education policies. The availability of reliable, broad-based data collection and analyses cannot be overestimated. Each year we discover more information that leads to the better targeting of our resources and attention. For example, this year our analysis has shown a relationship between the type of placement and the achievement of students and a performance gap between children who live in poverty and their classmates in all types of school districts, even the wealthiest.

Elementary English Language Arts, 2001 - Gaps in student achievement by income level exist in all types of school districts.

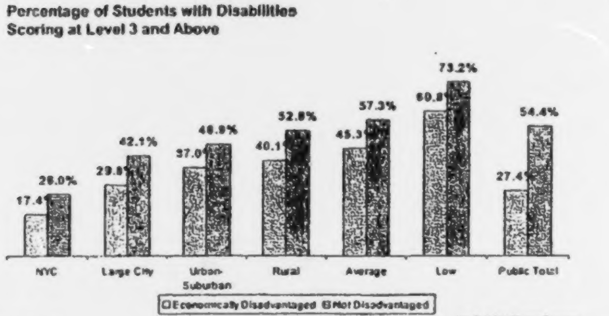


Percentage of Students with Disabilities
Scoring at Level 3 and Above

Source: LEAP File 4/5/02

New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities, April 2002

Elementary Mathematics, 2001 - Gaps in student achievement by income level exist in all types of school districts.



Percentage of Students with Disabilities
Scoring at Level 3 and Above

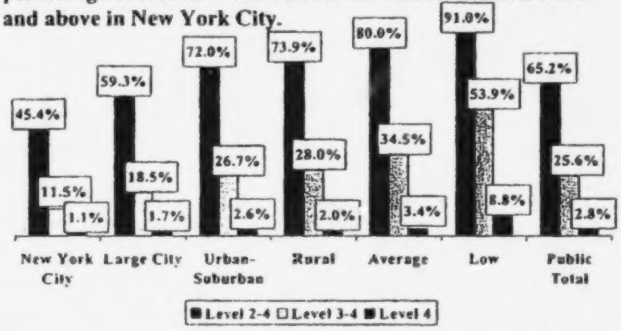
Source: LEAP File 4/5/02

New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities, April 2002

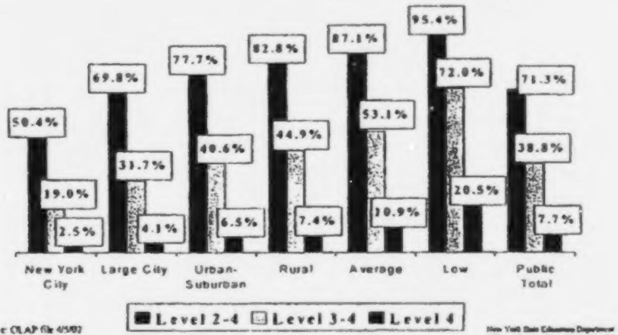
In New York State, we have traditionally had a very high rate of participation in regular State assessments for students with disabilities. However, the termination of any opportunity for students to be fully excluded from the educational accountability system and the IDEA's introduction of the alternate assessment requirements are important and positive concepts. The New York State Alternate Assessment (NYSAA) was implemented in 2001-02 to ensure that all students with disabilities participate in the State assessment system. The NYSAA measures the progress of students with the most severe disabilities in meeting the same standards set for all students but at the alternate performance indicator level. This year 11,500 students were assessed and, although the alternate assessment process is time intensive, educators and parents alike report that a wealth of information is now available for the IEP planning. This information measures progress for students previously unaccounted for in the assessment process.

The IDEA's required data collection facilitates valuable opportunities for disaggregation and in-depth analysis of student results. New York State's analyses have shown that success is possible for even the most severely disabled students when resources are available and individual needs are addressed. But the data also reveal that failure is all too prevalent for the significant numbers of students for whom those conditions are not met, especially in our urban areas. In addition, we continue to see disproportionate representation by race and ethnicity in classification rates, poor student performance and placement in the most segregated settings.

Elementary English Language Arts, 2001 -
A greater percentage of students with disabilities in the Low Need districts scored at level 3 and above compared to the percentage of students with disabilities who scored at Level 2 and above in New York City.



Elementary Mathematics, 2001 -
Almost all students with disabilities in Low Need districts scored at Level 2 or above, while only half of the students with disabilities did so in New York City.

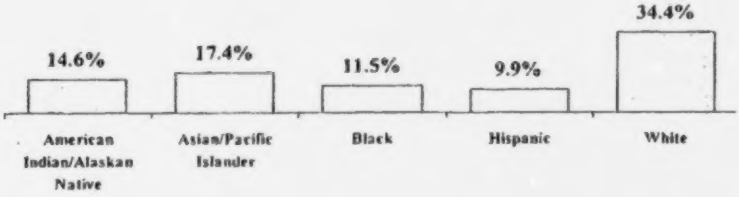


Source: OLAP file 4/5/02

New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities, April 2002

Elementary English Language Arts, 2001 -
There are gaps in performance of students with disabilities by race/ethnicity.

Percentages at Levels 3 and 4 by Race/Ethnicity - 2001



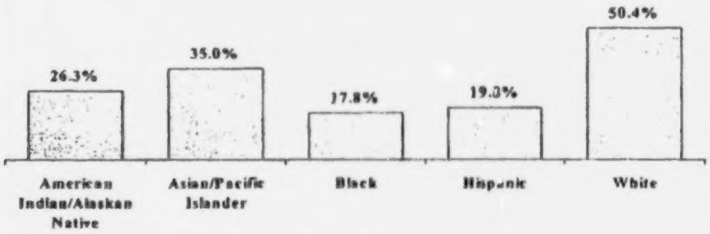
Source: LEAP File 4/5/02

New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities, April 2002

Public Schools Only

Elementary Mathematics, 2001 -
There are gaps in performance of students with disabilities by race/ethnicity.

Percentages at Level 3 and Above
by Race/Ethnicity

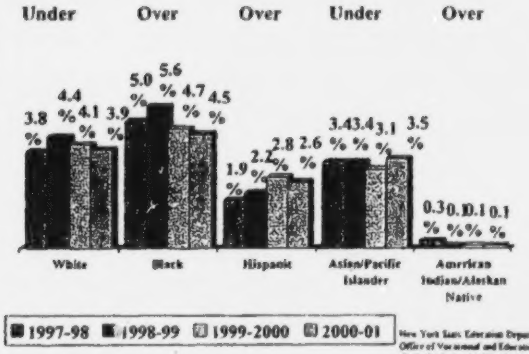


Source: LEAP file 4/5/02

Public Schools Only.

However, because of the attention to these issues IDEA requires, bolstered by changes in New York State law, we are already seeing progress on the issues of disproportionately. Continual, aggressive reporting of this data and forceful attention to measuring and improving results will make a significant difference over time.

Percentage Point Gap Between Total Enrollment and
Special Education Enrollment by Race/Ethnicity



New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities, April 2002

Conclusions:

Given the IDEA's extremely positive concepts and requirements regarding access, LRE, and accountability, why have they not had the desired impact for more students with disabilities? A significant part of the answer is related to the many burdensome requirements that drain both the dollars and the spirit of those trying to serve students with disabilities. The overwhelming number of minute mandates which control and micromanage the mechanisms for special education service provision are a dangerous threat to the laudable goals of IDEA in a time of fiscal and personnel shortages.

During my over 30 years in this field, I have had the privilege of meeting and interacting with thousand of professionals committed to providing service to individuals with disabilities. The overwhelming majority are remarkably dedicated and committed to improving the lives of students with disabilities. Virtually all want to do the right thing, even though they may not all know how to do it. The IDEA as it is currently written incorporates an assumption that a substantial proportion of our energies must be devoted to documentation of faithful adherence to process rather than ensuring that the maximum resources are focused on teaching and learning.

We all recognize that this is a time when both state and local education agencies must struggle with what amounts to "resource triage" as they make the tremendously difficult decisions relative to the allocation of limited funds. Currently, the process requirements of IDEA remove the ability to make these decisions based on the needs of students and funnel inordinate amounts of money to administrative tasks and due process proceedings. This focus on process requirements occurs at every level: federal, state and local. The federal Office of Special Education Services has just begun to discuss a move towards an outcome based monitoring system after years of attention to minute regulatory requirements and requests for mountains of documentation from State Education Agencies. The State monitoring systems are required to mirror the federal process orientation which then result in the local education agencies paying more attention to minor paperwork mandates than to the relatively unregulated but far more important areas of actual instruction and student outcomes.

In addition, the extensive due process protections imbedded within the IDEA have proven to be extremely expensive to implement and inequitably utilized. An industry of "lawyer/advocates" has grown up to either help the parent challenge the special education process or help the local district defend it. At the same time, many families are intimidated by the complex legal structures while educators fear the perceived (and often real) consequences of failing to accurately implement even the smallest statutory provisions.

The next IDEA must simplify its requirements and limit them to those areas that are most likely to have an impact on student performance. Paperwork must be significantly reduced and success must be measured in student performance, not strictly compliance with less significant process requirements. In addition to ensuring the level of funding promised over 25 years ago, greatly increased resources must be allocated to address the current and worsening personnel shortages. Creative incentives must be built into the statute to help attract and train the next generation of personnel and to allow institutions of higher education to expand and strengthen their pre-service programs in both special and general education.

In the end, the best indicator that any child will receive a quality education is having a well-trained teacher. We must seize the opportunity of this reauthorization to ensure that it not only provides the means to recruit and retain qualified special education professionals but also allows them to devote their energies to the business of teaching and learning.

IDEA Reauthorization: It's Time to Simplify and Focus on Performance

Lawrence C. Gloeckler

As we prepare for the next reauthorization of the Individuals with Disabilities Education Act (IDEA), there continue to be issues that have been difficult for policymakers and educators to fully resolve and that have significant impact on the quality of educational services for students with disabilities. To some extent, the 1997 reauthorization of IDEA magnified these issues, particularly those involving assessment, achievement, and accountability.

One of the dilemmas facing policymakers as the reauthorization approaches is the tendency to believe that the various problems that have persisted with IDEA can be "fixed" by adding new statutory provisions. Congress should be very cautious in this next reauthorization not to over-legislate or further complicate existing provisions, which can result in even more difficulty in implementation. Instead, I believe it is time to simplify a statute that has been made overly, and unnecessarily, complex.

REAUTHORIZATIONS ARE TOO FREQUENT

One ongoing concern is the timeframe for reauthorization, which occurs every five years. Typically, the regulatory process that follows is delayed, so that defining regulations are not available until the second year of implementation. That leaves three years to implement any new provisions. However, the last of those three years is usually a time in which debate about the new reauthorization occurs and opinions are shaped as to the next round of changes. This cycle does not recognize either the complexity of IDEA or the difficulty in moving policy from the federal level to the district level so that effective implementation can occur. The reauthorization cycle should be extended so that whatever statutory improvements are made, the law can be stabilized for a sufficient amount of time to allow for true implementation and accurate evaluation of its effects.

MANY ISSUES REMAIN

I would place the additional pressing issues in two categories: (1) program issues that have a direct impact on a student's quality of educational opportunity; and (2) technical problems caused by the complexity of statutory and regulatory provisions.

PROGRAM ISSUES

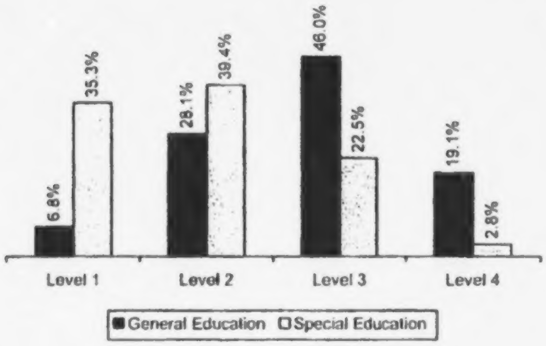
On the program side, the most pressing issues confronting the education of students with disabilities are the following:

- The challenge associated with providing real access for these students to the general education curriculum, including the need to compensate for the gaps in knowledge and skills of many older students who have been denied that access for too long simply because they are "in special education."

- Dilemmas associated with assessing students with disabilities, after so many years of accountability for special education being judged by regulatory process measurements rather than by student achievement.
- The many exacerbating factors that result in tremendous performance gaps between students with disabilities (even those with disabilities that are not intellectually limiting) and other students, especially in urban centers and poorer districts. (See Charts 1 and 2.)

Chart 1

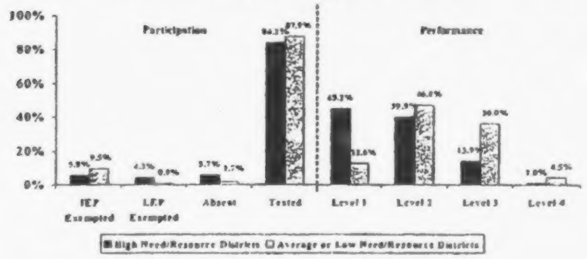
2001 ELEMENTARY ENGLISH LANGUAGE ARTS (ELA)
Performance Levels for General and Special Education Students



General Education = 188,256 Special Education = 27,372 Public Schools Only

Chart 2

Students with Disabilities
Grade 4 English Language Arts Test Results
2000
(Public School Districts*)
High Need Districts Compared to Average or Low Need Districts



Data are as of August 10, 2001

*Includes Special Act School Districts

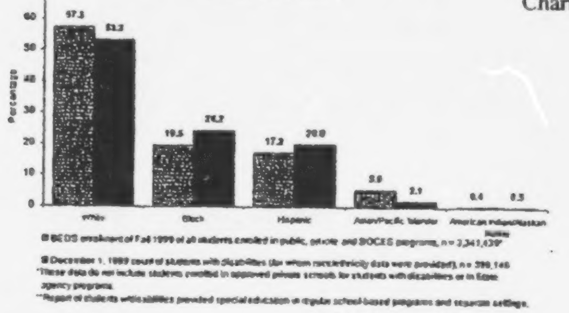
NYS Education Department,
Office of Vocational and Educational Services for
Individuals with Disabilities
August 2001

- Continued existence of disparities in the identification (Chart 3) and placement patterns (Chart 4) of minority children.

Race/Ethnicity of School-Age Students

(Source: 1999 New York State Basic Educational Data Systems (BEDS) Data and December 1, 1999 PD-4**)

Chart 3



▨ BEDS enrollment of Fall 1999 of all students enrolled in public, private and BOCES programs, n = 3,341,439*

■ December 1, 1999 count of students with disabilities (for whom race/ethnicity data were provided), n = 390,148

*These data do not include students enrolled in approved private schools for students with disabilities or in State agency programs.

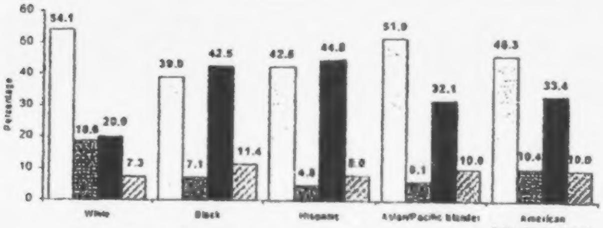
**Report of students with disabilities provided special education in regular school-based programs and separate settings.

Data are as of March 23, 2001

New York State Education Department, Office of Vocational and Educational Services for Individuals with Disabilities, August 2001

Chart 4

Placement of Each Racial/Ethnic Group of Students with Disabilities in General Education Classes and in Separate Educational Settings (Ages 6-21)
December 1, 1999
Statewide



☐ Percent in general education classes for 80-100 percent of school day
▨ Percent in general education classes for 40-79 percent of school day
■ Percent in general education classes for less than 40 percent of school day
▨ Percent in separate educational settings

Data are as of March 23, 2001

Source: PD-4

New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities, August 2001

- Recruitment and retention questions related to how we will obtain and retain the numbers of qualified personnel required to serve our students.

- Continued growth in the percentage of the student population identified as needing special education.

TECHNICAL ISSUES

The technical issues stem from the basic construct of the law and the complicated nature of the special education process it establishes. Inherent in the law is an administrative structure including due process, which is unique to special education and far more complex and more expensive per child, even before factoring in any costs associated with instruction and support services, than any administrative process in general education.

Process Over Performance

Untold human and fiscal resources have been allotted to attempting to make sure the process established by the law—referral, evaluation, placement, the Individual Education Plan (IEP), and due process arising over disputes about the process—is followed precisely. With federal and state monitoring systems aligned to check the process, school districts have hired administrators to focus on compliance with that process, and a cottage industry of "lawyer/advocates" has grown up to either help the parent challenge the process or help the local district defend it.

The Paperwork Morass

The law was constructed, in good part, by lawyers who are used to relying on paperwork for their practice. However, applying this level of complicated requirements to an education law has proven to be extremely expensive and in many ways irrelevant. The construct of the law has resulted in a situation where families with resources can best take advantage of it and families who are typically out of the loop, either because of lack of resources or lack of involvement in support organizations, do not reap equal benefit.

The Wrong Environment

The environment created by the statutory provisions is often one of intimidation, resulting either in parents being intimidated by the formal structures they must participate in or educators being intimidated by those same structures or by the perceived consequences of failing to accurately implement the statutory provisions.

Examples of persistent problems related to the statutory construct are the current discipline processes and the paperwork burden. The last reauthorization added to the problem. Congress, in attempting to compromise on the issue of discipline during the 1997 amendments, created such a technical morass of rules and procedures that very few implementers understand them and therefore lack confidence in their role in implementation. The amount of paperwork was allegedly reduced in 1997, but in practice it has gotten worse. Ask any teacher, related service provider or administrator if the paperwork has been reduced. Ask a single parent living in an urban center struggling daily to put food on the table for her children whether the 10-page due process notice she receives each year is a useful tool for her in the education of her child.

Certainly Congress did not intend this to occur, but the 1997 amendments and resulting regulations have in fact created more paperwork, not less.

PROGRAM RECOMMENDATIONS

No matter what changes are made in the statute, certain key program actions have to happen to realize the goal of improved educational results. These actions must include:

- Intervention services for students in early grades to improve their academic performance.
- Development of infrastructures that support children in general education.
- More effective recruitment and training of teachers and leadership personnel.
- High quality curriculum content and proven instructional methodologies that are systemically available for students with disabilities.
- Rethinking of the organizational patterns of schools, how faculty and support staff are used, and the role of other community-based services in supporting the education of students.

There are a mixture of program issues, some of which can be assisted by statutory changes and others of which are best left to implementation strategies. The 1997 amendments redirect some of IDEA's attention to the quality of a student's education. This reauthorization needs to build on that direction so that states and local districts can continue to explore more effective ways to improve the educational achievement of students with disabilities. States and local districts need to be able to waive requirements that may be barriers to creativity, when they are able to show effective and innovative approaches that do improve results.

Rebuild General Education Support Systems

We need to break the wall between general education and special education and view education as a continuum of interventions. There must be significant funding for support services in general education, which will lead to fewer unnecessary referrals and less due process, and will increase the proportion of money available for instructional purposes.

The current law prohibits interference with referrals to eligibility teams. A more appropriate construct for today would be a requirement that all children considered for referral are first reviewed by building teams to encourage the development of supports that make special education referrals unnecessary. Only when it is determined that is not possible would the referral then be made. This is particularly important in dealing with the issue of overrepresentation of minorities.

Priority One: System and Student Performance

The statute must make it unequivocally clear that students with disabilities must be included in all systems of accountability for student results. We should no longer be debating which children count and which children do not. All children should count in any accountability system. In New York State, for example, students with disabilities are included in all accountability systems. The analysis of achievement data in New York over time shows that children were being excluded from opportunities to succeed because of adult expectations related to their disabilities. The data also shows that when children are given opportunities and support, they succeed at significantly greater levels than when those opportunities are not available. (See Charts 5 and 6.)

Chart 5

Students with Disabilities
Regents Examination in English
Trends in Number Tested and Number Scoring 55-100 and 65-100
Public School Districts

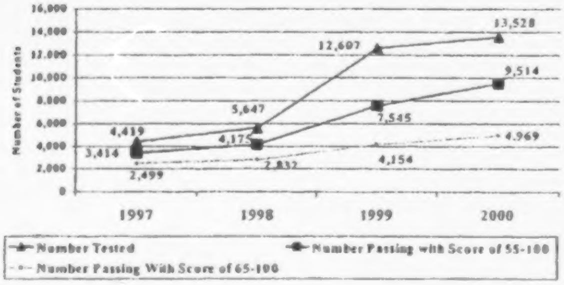


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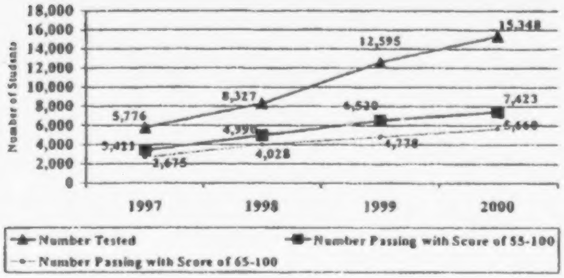
Chart 6

Students with Disabilities
Regents Examination in Mathematics - Course I
Trends in Number Tested and Number Scoring 55-100 and 65-100
Public School Districts



The data also shows that there is still a tremendous gap between the achievement of students receiving special education services and those in the general education programs. While some of this gap is easily explainable, we still do not know how narrow or how wide it should be. We only know that it should not be as wide as it has been. However, none of this would have been clear had the students been excluded from accountability systems.

Real School/Agency Connections

A significant body of research shows that when community-based services, such as mental health and health services, are readily available to schools, indicators of students' quality of education improve. The law currently, and unintentionally, inspires disputes among agencies involving funding and program responsibility for children, when we know we should be encouraging program collaboration and pooled funding. Consideration needs to be given to how IDEA funds, as well as funds for other programs that have obligations to young people with disabilities, can be better coordinated so that innovative service delivery models can be constructed around the needs of children and not be inhibited by the needs of auditors.

Teacher Quality and Quantity

In the end, the best indicator that a child will receive a quality education is having a well-trained teacher. No matter how many protections are included in the law or how well-constructed an IEP may be, there will be few resulting benefits without a knowledgeable and competent administrator to ensure the provision of those protections and a qualified teacher to implement the IEP. A lot of attention has been paid to the looming special education staff shortages. The age of the teaching force, in conjunction with the burdensome requirements of being a special educator, has led to predictions of tremendous staff shortages in the near future. We must seize the opportunity of this reauthorization to address this issue. There must be creative incentives built into the statute to help attract and train the next generation of personnel and to allow institutions of higher education to expand and strengthen their preservice programs in both general education and special education.

In addition to efforts to facilitate the availability and recruitment of competent administrative, instructional, and related service personnel, much greater attention must be paid to identifying and providing incentives to facilitate the retention of current staff. Each state needs a significant pool of noncompetitive monies at both the state and local district level to provide inservice training and technical assistance for both personnel and families. Unless some of the paperwork and other burdens discussed above can be reduced and additional resources and supports can be provided, we must anticipate increasing rates of staff turnover and the continued movement of our most talented and expert individuals out of the special education service delivery system.

TECHNICAL RECOMMENDATIONS

I believe the issues that are more technical need statutory revisions. The discipline procedures, both statutory and regulatory, must be streamlined and made clearer. There is no reason for such a complicated set of requirements. In addition, no children, disabled or non-disabled, should be denied educational services, although the place where the services are provided may have to be altered.

Reducing Paperwork: Just Do It

It is time to stop pretending to reduce paperwork and actually do it. We need to recognize not only that burdensome paperwork requirements create unnecessary costs, but also that they have made special education a far less attractive career. Studies have indicated that individuals are leaving the teaching and related services professions at least in part because they dislike the amount of paperwork they are required to complete. The law should be scrutinized from beginning to end, and any paperwork requirement that does not add value to the educational process should be removed. Certainly there are many examples of redundancy in notifications and paper trails that could be reduced without affecting any safeguards. The complexity and length of the IEP should also be scrutinized to determine where the content might be simplified, while retaining those elements most critical to ensuring a free appropriate public education for children with disabilities.

Focus on Program Quality, Not Process

In addition, legislative language is needed to provide direction to those conducting due process proceedings. These legislative revisions should make clear that the critical factor in determining which party prevails is the appropriateness and impact of the services recommended and provided to students, not procedural irregularities. The focus on procedural issues has contributed to manipulation of the system to "catch" the other party on minor technicalities without any meaningful effort to solve issues related to program delivery.

Accountability Should Be for Performance

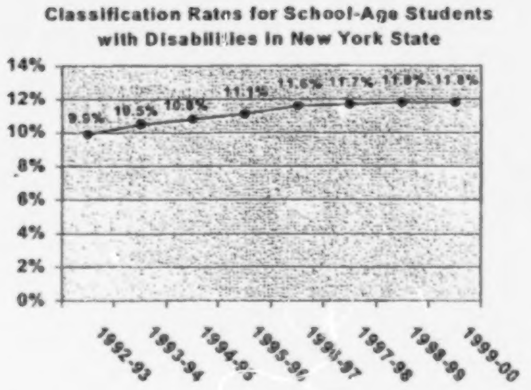
The statute needs to be reviewed carefully to determine which of the currently required process accountability measurements are not educationally necessary. There is much room for consolidation of process accountability measurements in the planning and reporting requirements for both state education agencies and local education agencies. The monitoring and oversight of program delivery from both the federal and state level should focus on the mechanisms for improving outcomes for students, rather than devoting such extensive time and resources to the less significant but extremely numerous process requirements.

Funding

I leave to last the issue of funding, since the debates about it are already so prominent. Whether the full funding of IDEA occurs this year or in the next several years, it needs to occur. Special education has become an expensive proposition for many reasons, some of which I described above. When full funding does occur, there needs to be a recognition that state education agencies need adequate funding available to provide oversight, resolve disputes, develop programs and provide technical assistance. The current cap on state access to IDEA funds for these purposes is counterproductive, given the complexity of the law and the resulting demands on states.

There also needs to be a comprehensive effort to establish adequate support services in general education. Again, using New York State as an example, the state legislature has, over the past several years, substantially increased funding for prevention and support services in general education aimed at reducing unnecessary referrals to general education. As a result of this effort, the classification rate in New York State has stabilized for the first time in decades.

Chart 7



Classification Rates for School-Age Students with Disabilities in New York State

Data are as of March 23, 2001

New York State Education Department
Office of Vocational and Educational Services
for Individuals with Disabilities, September
2001

Only when these supports become systemically available in general education will we begin to be successful in reducing the proportion of students unnecessarily referred to special education, particularly those who reside in poorer school districts.

CONCLUSION

In conclusion, the IDEA, as reauthorized over the past 25 years, has become an exceedingly complicated law, with recent educationally oriented requirements layered on top of civil rights and procedural requirements. The result is an excessively complex set of requirements—some which have proven essential to ensuring that students with disabilities receive an appropriate education, and some which have distracted human and fiscal resources from the task of educating children. The next reauthorization needs to move this statute in the direction of a streamlined, more focused set of provisions that allow both families and schools to place primary emphasis on educational achievement and developmental growth. Congress needs to target more resources, not necessarily through IDEA, for systemic prevention and early intervention and support services in the general education system. The reauthorization timetable needs to be lengthened to allow more time for implementation of any new requirements. Every incentive should be established to support the recruitment and retention of qualified personnel and creativity and innovation in the instructional process.

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In the end, students with disabilities will need to learn the same information contained in the general education curriculum as any other student would. We need to prepare these students not for menial jobs, but for opportunities to participate fully in society and pursue meaningful careers, postsecondary education, and as high a quality of life as possible. We must use this reauthorization opportunity to simplify and restructure the IDEA in such a way that it will *facilitate* the achievement of these goals for individuals with disabilities rather than reduce the likelihood of successful outcomes.

APPENDIX D - WRITTEN STATEMENT OF DIANE McCAIN, DIRECTOR, CHOICE OFFICE, FLORIDA DEPARTMENT OF EDUCATION, TALLAHASSEE, FLORIDA

Testimony of Diane McCain
Director, Choice Office
Florida Department of Education

Florida's John M. McKay Scholarships Program for Students with Disabilities

Thank you, Mr. Chairman. And Congressman Keller. We are very pleased to have this opportunity to share information about parent choice in education and Florida's McKay Program for Students with Disabilities. On behalf of the thousands of students being served in both private and public schools through this program, I thank you for your attention today.

Florida's children regardless of their family income are assured of an education at public expense. Our state leaders believe that every child can learn, if given the opportunity.

In our state, public funding for services is not new. Some families may choose to attend a private school and none of their share of the public support follows the child. Some families may choose to attend a public school. For more than 15 years, school districts in Florida have been able to contract with private schools for services for these students.

We believe that school choice is a method for making our educators more accountable to parents in Florida. With the McKay Program, our legislature has empowered parents to choose their children's schools. Parents are given flexibility perhaps for the first time.

Before the McKay Program, the decision regarding services was made by the school district. Children at risk, children in the juvenile justice system and children with special needs have had the decision made by local school districts. Over $40 million dollars has been paid to provide services by contract to more than 8000 students. With the McKay Program, parents *also* have an option.

Florida has now made available two types of tuition vouchers for K-12 students: The Opportunity Scholarships Program and the McKay Scholarships Program for Children with Disabilities. Today I will share specific information about the McKay Program:

Who is eligible:

Public school students in grade K-12, with disabilities.

The parent of a public school student with a disability who is dissatisfied with the student's progress may participate.

To alleviate confusion and misunderstanding, our legislature defined disabilities for the purpose of this program to include:

mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospitalized or homebound, or autistic.

The choices parents now have are **both** public and private. For the first year, approximately 1,000 students participated in 139 private schools. For year two, 5000 students are participating in more than 400 private schools. The majority of students is not severely disabled and is in middle school grades.

The Department of Education mails parents of students currently receiving special education services a letter. The letter serves to inform the parent that this program may be available to them. Included are a brochure and a toll free number for parents to use to obtain more information.

Calls to the parent information line have exceeded 30,000 in number. To serve students and process their registrations efficiently, the Department has also activated a toll free line to serve districts and private schools, in addition to the toll free assistance line for parents.

The program began as a pilot in one school district. For the first fully implemented year, which we call year one, we believed that the popularity would continue and that parents were strongly indicating a desire to have such a program. To facilitate amendments and make the law more "user-friendly" during year one, parents and private school administrators met with legislative staff, district school personnel and Department of Education administrators to determine how the implementation of the program could better serve students.

The group developed an *action plan* that served as a recommendation to the Florida Senate. The Legislature enacted many of the suggestions and in year two we saw an increase in parent participation and private school participation. The creation of the Choice Office, as a one-stop location for implementation, notification and payment processing has also provided a more streamlined approach to serving students, parents and school districts.

We are fortunate working with this program because we get to hear the happiest of stories, when it comes to the program and students:

Our parents and the schools (both public and private) do not hesitate to talk about the good things being accomplished and the results they are witnessing.

I'd like to share this experience about a child from Congressman Keller's district, in Orlando, Florida.

The school admitted a middle school student who was identified in the public school system as Educable Mentally Handicapped (EMH). He could not read nor did he have any math skills. In addition, it was reported by the child and his parents that his teacher had verbally abused the child.

Recognizing the extent of the verbal abuse, his mother removed him from the public school system and brought him to The Pathways School. When he arrived, his mother's aspirations were for her son to be able to complete basic life skills like reading road signs, filing out a job application.

After several months of intensive encouragement, attention and a new school setting, her son now not only reads, but he can also add, subtract, and multiply. He is a model citizen.

The administrator and the teacher report that the student is a pleasure to have at the school and they are very pleased with his progress and the fact that they have accepted students in the McKay Program.

We have had schools that were reticent about participating in this program with the government. Their individual boards were not sure how long the program would be around and they did not know what to expect from these "children."

An aunt to help her nephew pleaded with one school, in particular. She was his guardian and the child had experienced several set backs, going from one school to another in the district, with little or no progress. The woman had asked for and been denied a waiver to attend another school by the county. The county advised her that they were offering the "best they had."

At great risk the administrators accepted one child on a trial basis. They agreed to serve one child and see how it went. This was the child.

The school now has more than 48 students and all are engaged, and progressing. The test scores are improving and for the first time, parents of many of these students have a fair assessment of their child's potential and accomplishments.

I have countless stories. It is interesting to me to hear from public school teachers themselves who may recommend to a family that another school may better serve their child. This is a teacher that is considering the child's needs first, not the assignment needs of a district.

If you were to ask me what has made this program a success, I would have to say the parents, their knowledge and good information. This program is not for every family or every child. This program does not solve all problems.

The McKay Program does provide options. And it is good place to start. We hope to communicate that strong message each day.

One of the most important responsibilities we have in implementing this program is communication. Accurate, timely and well-executed communication. We have parents with needs, district staff with needs, and the general public to serve.

Parents deserve the best treatment we can provide and we have taken steps to assure that they are given as much information as possible. We also encourage parents to work very closely with their child's teachers, the school's administrators, and the special education specialists within their school district.

Through the Commissioner's Non Public School Advisory Council, FloridaChild and Floridians for School Choice, as well as other parent advocacy groups, information about private school requirements and participation has been made available.

Although we do not recruit private schools, parents often are our best recruiters for schools to participate. They know the best schools available and they solicit participation of the schools. As a government agency, we also send written information to all listed private schools in the State of Florida. And we are ready to respond to questions regarding regulation of education and special education services.

To assist local school districts, regional meetings are held each year to update personnel on changes in policy and law, and to share information. The Department also conducts two teleconferences and provides information using the Internet and an online reporting system.

Frequently asked questions and answers, as well as intent notification forms and other information are posted on the department's web site at www.floridaschoolchoice.org.

Other states have been in touch with our office and have indicated a strong interest in modeling similar programs. The Department is in the process of surveying parents and an evaluation of the program is planned for early fall.

In closing, I share the words of a parent participating in this program:

> *This is not a fight between our family choosing a public school versus a private school. It is about my child and what's best for her. I'm all for inclusive classes, but it wasn't right for my daughter, when a child is lost in the classroom, that child is losing a year of learning. Something's had to be done. We are grateful for the McKay Program and the ability to be able to make a choice.*

Thank you!

TECHNICAL INFORMATION REGARDING HOW THE PROCESS WORKS

Private School Participation

Sign Up:

- Private schools are not licensed or regulated by the state. However, to participate in the McKay Program, private schools must:

    1. Be listed with the Department of Education as a Florida private school. Private schools become listed with the department by completing an annual survey form and obtaining a school ID number.

    2. Using their school ID number, the private school will then complete an "Intent to Participate" form available online at www.floridaschoolchoice.org or www.opportunityschools.org. The school's intention must be submitted no later than May 1, for the upcoming school year. As part of the form, several affirmations and documents are required:

- Fiscal soundness – Demonstrated by being in operation for 1 school year *or* by providing the Department of Education with a statement by a certified public accountant confirming that the private school is insured and the owner or owners have sufficient capital or credit to operate, *or* by filing a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter with the department.
- Agreement to comply with the anti-discrimination provisions in federal law, 42 U.S.C. s. 2000d.
- Agreement to meet state and local health and safety laws and codes.
- Agreement to be academically accountable to the parent for meeting the educational needs of the student.
- Agreement to employ or contract with teachers who hold baccalaureate or higher degrees, or have at least 3 years of teaching experience in public or private schools, or have special skills, knowledge or expertise that qualifies them to provide instruction in subjects taught.
- Agreement to comply with all state laws relating to general regulation of private schools.
- Agreement to adhere to the tenets of their published disciplinary procedure prior to the expulsion of a scholarship student.
- Submission of a published tuition and fee schedule, as well as description of courses offered.

Registration and Enrollment of Students:

Electronically, using a pass-code, the private school submits an invoice for each scholarship student. The student is then "confirmed" automatically or notice is sent that there is other information needed before payment can be processed.

For each student eligibility is confirmed using live data from the local school district database for public school students. This information is available by pass-code also by the district, where they may check for a list of students being enrolled in a private school.

Upon confirmation that all requirements are met (eligibility confirmed, child enrolled in a school, intent given to district, invoice submitted, etc.), payment is then processed by the Florida Department of Education.

Payment in the form of a state warrant is made payable quarterly to the parent and mailed to the private school. The parent of each student receives a warrant and endorses the warrant payable to the private school, for deposit into the school's account.

APPENDIX E - WRITTEN STATEMENT OF RICHARD SCHOONOVER, DIRECTOR OF STUDENT SERVICES, BELLEVUE PUBLIC SCHOOLS, BELLEVUE, NEBRASKA

Special Education Testimony

Presented to

Subcommittee on Educational Reform

By

Richard L. Schoonover, Ed.D.

Director, Student Services

Bellevue Public Schools

Bellevue, Nebraska

May 8, 2002

Good Afternoon Mr. Chairman and members of the subcommittee, I am Richard Schoonover, Director of Student Services for Bellevue Public Schools. Bellevue is the fourth largest school district in Nebraska. We are the proud home of Offutt Air Force Base and the Headquarters of the United States Strategic Command. Approximately 45% of our students are children of active duty personnel stationed at Offutt Air Force Base, and 1400 of our students, birth to age twenty-one, are students with disabilities. Bellevue Public Schools implemented comprehensive services for school age children in 1974 and comprehensive services for children with disabilities from birth to age 21 in 1979. Dr. John Deegan, Bellevue's Superintendent of Schools, asked me to provide information to the committee today for the Bellevue Public Schools.

The Bellevue Public School district has been actively exploring ways to improve services and implement procedures which provide assistance to students prior to the need for verification. The district with the assistance of the Nebraska Department of Education has developed and implemented two programs to assist students prior to verification.

- We have a Saturday School for students enrolled in one of our middle schools. The program provides academic and behavioral support for students in need.
- The district also has a teacher training program for elementary teachers which concentrates on literacy, reading, and language skills. The purpose of the training program is to provide teachers with additional teaching techniques to work with children.

The district has integrated the funding from Title 1, Comprehensive School Reform Demonstration Project, school district general fund, and special education to implement a restructuring project in four of our elementary schools which are Title 1 buildings. This restructuring project has assisted these schools and all the students including students with disabilities. We would like to continue our restructuring projects and expand to all of our buildings, elementary through secondary level. The goal would be to obtain funding which would provide the flexibility to address each school's individual needs.

During the next school year the district will develop and implement a plan to integrate non special education support services with special education support services. Our intent is to improve services and implement cost effective and student efficient services. We will also be designing and implementing an expanded student/teacher assistance team which will provide student assistance and teacher assistance with the purpose being to intervene early and perhaps a referral to special education will not be needed.

The district is currently working with the Nebraska Department of Education to redesign and integrate our services for children younger than five years of age. Currently the district provides preschool services funded by special education, Title 1, and early childhood grant money from Nebraska Department of Education, local district funding, and in cooperation with other school districts in Sarpy County Head Start. We are in the process of designing and implementing an integrated model which will be a single program birth to age 5 with different funding sources.

I appreciate the opportunity to share a few thoughts with the members of this committee today.

Bullet Points

- The Individuals with Disabilities Education Act (IDEA) should encourage and facilitate the integration of funding sources to serve students with disabilities. IDEA should encourage the integration of IDEA, Title 1, Comprehensive School Reform, state special education funds, and local funds so that programs can be innovative, efficient, and cost effective.
- Rethink the Individualized Education Program (IEP) process to emphasize that it is primarily an instructional process, not a compliance process. If necessary, create a compliance process and document separate from the IEP.
- IDEA should provide greater flexibility in the use of staff to meet the needs of students with disabilities and the needs of the district to monitor the delivery of services. Re-examine the definition of the local education agency (LEA) representative for the IEP meeting. When a student is in the general education classroom a majority of the time and only the teacher is working with the student, the classroom teacher should be permitted to serve as the LEA representative for that IEP meeting. In this situation an individual qualified to supervise or provide special education services may not be needed. The classroom teacher, with some training, would be a better choice.
- Closely examine and monitor the issue of medical cost throughout the reauthorization of IDEA. School districts need better direction and guidance to appropriately monitor and manage this area.
- IDEA could provide more guidance and direction as to when an independent educational evaluation is required. Currently if the parent disagrees with the results of the evaluation provided by the district, they could request an independent educational evaluation and provide very little detail. The district either provides the evaluation at no cost to the parent or requests a due process hearing to prove the independent evaluation is not needed. It is usually cheaper and less time consuming to pay for the evaluation than go to a due process hearing.
- Due process hearings are time consuming, expensive, and not family friendly. In addition to mediation, add a component for binding arbitration for some disputes. An example of an issue for a different process is the Independent Educational Evaluation disagreement. This type of disagreement could be resolved using a process that is less expensive and less time consuming than a due process hearing.
- An ounce of prevention is worth a pound of cure. IDEA needs to provide flexibility for local innovative programs and procedures. IDEA should provide funding which encourages states and school districts to

"think outside the box" and develop services for students that provide the "ounce of prevention". Limited services should be available for students prior to verification of a disability, and for students who are at risk of being identified.

- People generally lack ideas about innovative programs because IDEA has not aggressively encouraged innovative ideas or new thinking. IDEA should be modified to require that the federal government sponsor and fund a staff-training program for special education administrators. Emphasis should be on how the federal government can help the local education agencies design and implement innovative programs, which are efficient and cost effective.
- We would encourage the full funding of IDEA. Providing excellent innovative services to students with disabilities requires the full partnership of all levels of government and the flexibility to use funds to address the specific needs of each community.

Dr. John Deegan, our Superintendent of Schools, has worked with many people in this room today and he wanted me to express to you how much we appreciate the opportunity to share our thoughts and ideas with you. The Bellevue Public Schools will provide any assistance we can as the reauthorization of IDEA proceeds. I have enjoyed the opportunity to share my thoughts with you today and appreciate the opportunity you have provided me.

Thank you.

Richard L. Schoonover Ed.D.
Director of Student Services
Bellevue Public Schools
Bellevue, Nebraska

APPENDIX F - WRITTEN STATEMENT OF SALLY ARTHUR, DIRECTOR OF EDUCATIONAL SUPPORT SERVICES, HUMBLE INDEPENDENT SCHOOL DISTRICT, HUMBLE, TEXAS

Testimony of Dr. Sally Arthur

Hearing before the
Subcommittee on Education Reform
Committee on Education and the Workforce
United States House of Representatives

May 8, 2002

Good afternoon Mr. Chairman and members of the Subcommittee. My name is Dr. Sally Arthur. I am the Director of Educational Support Service in Humble Independent School District, Humble, Texas. Humble is a suburban school district in northeast Houston with an enrollment of 25,522 students. Of these, 2,650 students are identified in need of special education supports and services. Humble ISD's ethnic breakdown is 71% Anglo, 3% Asian, 15% Hispanic, and 10% African American. 17 % of the students qualify for free and reduced lunch. I am also the president-elect of the Gulf Coast Council of Administrators of Special Education, a regional sub-organization of the Council of Administrators of Special Education. This organization represents 54 school districts in the region surrounding Houston, Texas. I received my bachelor's degree from Ithaca College, Ithaca New York; my master's degree from Syracuse University in Syracuse, New York; and, my doctorate from the University of Houston, Houston, Texas.

It is my pleasure to be here today. I have spent my career advocating for improved supports and services to students with disabilities. I have adopted the philosophy and given a voice to the need to bridge knowledge and practice generated by general and special education research into both systems to provide continuous improvement for the betterment of all students. Methods established on the fundamental principles supported by research and measured by data have positive effects for students and school districts willing to support innovative tactics. I am here because 27 years ago the United States Congress saw a need to improve education and took courageous steps to do the right thing. I believe that this was the foundation of reform for students with disabilities and I applaud the United States Congress' visionary leadership. We, as leaders in this society, need to reflect on the progress, possibilities, and concerns that have arisen due to this longitudinal effort. We should now adjust our legislation, policies, and practices so that they reflect the knowledge generated by these efforts. All in our society have gained from the access to educational opportunity and acceptance of diversity as a result of Public Law 94-142. If special education legislation is to be truly dynamic and impactful, it must be adjusted and improved from time to time based upon a firm understanding of its positive legislative supports, and, in turn, its negative effects. One of those times is upon us now. We have learned much from the implementation of IDEA 1997.

Bridging Knowledge into Practice

✓ Requirements for Funding IDEA Part D

Let there be no mistake, Humble I.S.D.'s success at innovation is a direct result of the leadership from campuses to superintendent in my district. These individuals are willing to take risks that allow me to fulfill my job role in other ways besides compliance. Therefore, I am ever indebted to their faith in the continuous improvement process and the need for effective practice school-wide.

I come here today to celebrate some of the successes at Humble I.S.D. and to emphatically assert that university research provides the foundations of knowledge for effective practice. I advocate for additional financial support for school-based practitioners who wish to implement innovation. Research-validated practice that work in schools shares certain characteristics. They unify and create systemic support for all students. They are sustainable. They respect individual and school needs and are adaptable to both. They have on-going support to develop capacity of building membership. School-wide efforts integrate reform in a collaborative manner and enable the research-based practices in special education to penetrate and improve the environment for all students. They adopt a problem-solving model that supports school wide, classroom and individual interventions through use of data. They are efficient in nature to ensure the best possible level of implementation by the school community. They are inclusive of parent, teacher, student and administration in their planning and execution. They open opportunities for new learning and communication throughout the somewhat fragmented communities within the school setting. All of these take money and time for schools to implement. Funding through IDEA Part D has created powerful knowledge that has the potential for significant positive effects on student outcomes. Currently only limited access to this funding stream has been available to public schools and it has been based on the need of the researchers to do the work. Requirements for sustainable bridging efforts between public schools and universities needs to be a part of this funding source. If research is to guide our practice, the funding of IDEA Part D should enable the knowledge gained from the expenditure on research to reach the classroom and benefit the children.

I will discuss three of these research-based practices that are being implemented in my school district. Each of them has generated successful outcomes but is denied full realization of their potential due to barriers that exist in the law.

Positive Behavioral Interventions and Supports

In response to the communities' and schools' need for a safe and effective learning environment, schools have struggled with the challenges presented today. Many students do not enter school with a set of pro-social behaviors established by families. Even the best families in our hurried society have parents struggling with jobs and money issues that reduce the amount of time spent establishing behaviors in young children and supporting behaviors in older students. For schools to continue doing business with the expectation that students enter school "ready to learn" creates a system of failure for at least 20% of our children who lack this pro-social repertoire. The old system based on "students knowing better", zero tolerance, and punishment was created in a different time with different mores. Our acceptance of responsibility to teach behavior can make a significant difference in the lives of our students. Punishment does not change behavior; it only stops the behavior. For those in need of learning a set of new pro-social behaviors, a system that instructs and changes behaviors must be in place to support appropriate behavioral choices in the learning environment. The system must be efficient and user friendly. The use of systematic approaches can merge, coordinate, and maintain some of the effective practices that currently do occur in the school setting. Decisions made on behavior need to be data driven so that objective focus can be maintained in areas that need of improvement. Supportive structures for the adults and students need to be available to sustain the efforts of a positive learning environment.

School-wide Positive Behavioral Intervention and Support (PBIS) is a system of expectations and interventions that address the needs of students and teachers in various school environments. The system empowers adults and students with clear expectations to help one another. The system teaches students expectations in all environments, identifies unacceptable behavior in the environments, has clearly defined set of consequences, and positively reinforces students who follow those expectations. The research is powerful and generated from universities throughout the country. The research supports the notion that to change the environment for a few would not accomplish what needed to be done for many. Because of these pioneering efforts, many will benefit in a clearly defined atmosphere. Currently IDEA speaks of PBIS with individualized purpose and expectations, but for schools to gain the necessary time to work with the most challenging on campuses, a system of school-wide supports must be adopted on a campus. Legislation needs to support these efforts in the general education environment and instruction as well as the curriculum. Expectations and accountability for behavior and social skills in general education environments and instruction should be a part of the new IDEA.

Alternative Education Placements Were Not the Only Answer

In Humble ISD, we began exploring ways to improve behavioral outcomes for students. Our statewide data from the Program Analysis System and Data Analysis System (PAS/DAS) in Texas reflected that we were significantly more punitive in our management of students' behavior in both general education and special education than the state average. We began exploring alternative methods to establish better practices in the classroom and improve conditions in school environments. We created a secondary task force for behavior and made recommendations regarding what programming changes would be necessary to improve this significant deficit. We enlisted the support from the Deputy Superintendent for Secondary Schools, the Associate Superintendent for Elementary Schools, and the Assistant Superintendent for Instruction. These individuals carried the message to the campuses and gained awareness and support to implement new practices. Therefore, we began our campus efforts by delivering data and information to the district-wide campus leadership. These data brought an awareness of the concern about the use of punishment in the district.

Further, we added a significant amount of training on student disciplinary practices to the administration, school psychologists and other assessment personnel. We developed decision-making forms and guidelines to assist principals in correctly placing students in alternative educational settings. We joined collaboratively with the principal at the Discipline Alternative Educational Program (DAEP) in training and consultation.

Conversations with all administrators included the effects of "off campus" placements in an alternative educational environment and the effect on long term outcomes for students both academically and behaviorally. Although the environment in the DAEP was supportive and ensured the vast majority of students' success on the DAEP campus, we realized that it was impossible to create the curriculum and course rigor that was available at a middle or high school campus. To put it bluntly, the smaller numbers of students housed at the DAEP would not support the range of elective courses or significantly advanced classes available at the student's home campus. We began school-based training on school-wide positive behavioral supports and systems thinking. These training sessions provided feedback conversations that identified practices that were already established in the district, thereby reducing the distress in relation to change. We renewed our commitment to Character Education. We increased our efforts to communicate with parents through conferences. We began talking to administrators about better ways to disaggregate data to support school-wide efforts.

Our gains are substantial. Are we there yet? We are not. The continuous improvement philosophy and professional learning community in Humble ISD supports reflection about our next steps and plan for the future.

We are beginning this summer with a district-wide general leadership training on positive behavioral supports. That leadership training will improve knowledge about campus implementation. It will explore the ways and means by which campuses can further implement PBIS. Further, we have united intensive staff development efforts into a cohort of five leadership schools that will begin a system-wide effort of establishment of school-wide positive behavioral supports. Each campus will facilitate its own plan and unique implementation of the plan. Each campus plan will share the required characteristics of established practice from the literature.

Barriers to School Wide Positive Behavioral Supports in IDEA

✓ **School Discipline**

IDEA 1997 and the resulting federal regulations created a logistical problem in relation to school discipline. The current regulations diminish the capacity to follow the principles of PBIS by establishing variable rather than clear guidelines of behavioral expectations to students and parents. Loopholes are available and students can learn to misbehave from the lack of consistency. Further, the possibility of human error is monumental, reducing the ability of campus administrators to ensure compliance to the regulations. Campus administrators are expected to follow a maze of regulations and make decisions in relation to their ability to consequent a student's for inappropriate behaviors. This maze of regulations has numerous decision points, all potential vehicles for litigation. This inequitable system creates opportunities for exploitation of the system. Further, it assumes that all individuals are capable of understanding and applying these legal complexities. After five years of studying it, I am not certain I could make the correct decision with limited time to reflect.

I support legislation that would allow school districts to provide a Free Appropriate Public Education within a unified discipline management system. This system should allow a Local Education Agency (LEA) to establish clear guidelines for all, but require the LEA to provide equitable education through supports and services in special education. FAPE can be delivered through the IEP team meeting addressing a student's academic and behavioral needs in the environment in which he is placed as a result of the disciplinary decisions. Protections and limitations from excessive removals should be established for all students. These protections should be clearly defined and consistently enforced.

Schools should be able to make program changes to ensure the safety as well as program appropriateness without having to defend their actions first in a due process hearing. The "stay-put" requirements under the IDEA should be modified in instances of behavioral change.

Curriculum Based Measurement

Curriculum Based Measurement blends efficiency, effective practice, and problems-solving methods into a system of support that is dynamic and responsive to individual student needs. This assessment process provides opportunities for intervention at early grade levels, involves parents in the interventions, measures growth across time, and allows response to student learning issues in fundamental skill areas of reading, writing, and math. Curriculum-Based Measurement is dynamic due to its formative nature and provides data to direct instructional decisions, therefore, making the decisions responsive to student needs. The process occurs over short increments of time and measures student responsiveness to an intervention. Additionally, the practice helps everyone involved to focus on the learning process of a student in distress and aides in separation of teaching issues versus learning issues.

Curriculum-Based Measurement probes are designed for the campus and district in which the student operates. Probes of student learning are created from the curriculum. The probes are standardized according to curriculum in the school district. They are aligned with valid measures. Student fluency in academic areas is measured across time. Curriculum-Based Measurement has the potential to improve instruction for many students, as it is embedded in a pre-referral process. The problem-solving teams aids in the design and tracking of the student's progress and determines from a set of standards the efficacy of a referral to special education. These processes empower teachers to be problem solvers in relation to students. Interventions give teachers the tools they need to meet with student success when the student doesn't learn in traditional methods. The interventions engage parents and teachers in the learning process. Parents that are disenfranchised with education can be taught how to assist with their student's learning.

In Humble ISD we began our quest for implementation of Curriculum Based Measurement two years ago. Administrators in my department began exploring the possibilities of this process for systems improvement. Methods were explored to improve instruction and collect data to support our efforts in the classroom. We made a decision to begin the process in the elementary schools by using two implementation sites. The implementation has brought about a need to re-educate many people in the eligibility process, re-define the role of school psychologists, and challenge barriers about relating to the willingness of general education members responsibility to the pre-referral process and the willingness to problem solve academic and behavioral services for students.

Bilingual Child Study Team

The number of culturally and linguistically diverse (CLD) students in the United States continues to increase at a rapid pace. Projections for the year 2050 suggest that the Anglo population of the United States will decrease from 73.5% to 51.2% of the total population. This trend is reflected in the changing demographics in the public schools. Unfortunately, many of our training programs do not prepare administrators, teachers, counselors and school psychologists to work with CLD students and their families. Humble ISD developed a team approach to coordinate intervention and evaluation of these students. The Bilingual Child Study Team reflects general education and special education experts in bilingual education. Cases are reviewed in a central staffing format and decisions are made in relation to the student's needs. The reduction of inappropriate referrals reduced from 21% in 1999-2000 to 3% in 2001-2002. This problem solving method is well documented in the research as a method of reducing inappropriate use of the special education system.

Barriers Contributing to Problems in Implementing Innovative Practices

✓ Lack of Consistency in Assessment and Eligibility

The current eligibility of students with disabilities needs to be constant between states. Methods to determine eligibility need to remove any doubt whether students suffer from teaching issues or a true disability. Means identified in the literature and by groups such as the National Center on Learning Disabilities Round Table Paper support the process of Curriculum-Based Measurement as a way of separating instructional problems from disabilities. Additionally, Curriculum-Based Measurement is a means available to distinguish learners who are culturally and linguistically diverse. Through embedding this in our Bilingual Child Study Team, our district has been able to separate lack of educational experience from real disability issues. Legislation should require these practices.

States should be required to provide teacher education at the pre-service level that trains teachers in both systems and brings about effective teaching practice for all. A certification should afford the opportunity to work in both systems with the expectations of using research validated teaching practices. This would provide a pool of teachers that could extend beyond their classroom. Student's with special education need require the best teachers with the most skills.

✓ Need to Fail

The reluctance on the part of general education to adopt methods of special education emerges from the language of separated systems inherent in special education law. Beliefs that all special education practices should stay in special education have developed over the last 27 years due to continued practice of legislation, policy, and methods in isolation that separate rather than unite efforts. Curriculum Based Measurement should be an expectation in IDEA and in the ESEA rules and regulations. The "need to fail" language, beliefs and customs surrounding IDEA should be removed to align with the philosophies of Curriculum Based Measurement to be dynamic and responsive. Certainly, universities should continue to educate school psychologists in standardized assessment procedures, but greater emphasis needs to be placed on Curriculum Based Measurement.

The "Need to Fail" principles should be removed to provide successful implementation of curriculum-based assessment and increase service to students in earlier grades. Most early grade teachers are able to identify, with relative accuracy, students who are not making the necessary gains. Appropriate efforts could contribute to a significant difference in numbers of students in need of special education and long-range outcomes for all students.

✓ Lack of Inclusion in Accountability Systems

The inclusion of students with disabilities in the accountability requirements and procedures that maintain the attention of school administrators to quality instruction and programming should continue. For far too long, in the state of Texas, students with disabilities have been excluded from the administrative reporting procedures that other student's data measured. Non-disabled student data was considered the only quality indicator related to school performance. This loophole increased the inappropriate referral and placement of students to special education. Assessment professionals assumed the position of gatekeepers and, all too often, gave in to administrative pressure to remove students from the state's high stakes assessment system to improve school's report cards. IDEA needs to reflect unified accountability standards that do not present an opportunity to remove students that are not performing.

On the other hand, high stakes assessments present a myriad of issues in relation to student performance. They give a false sense of adequacy of education. Teachers are pressured to spend significant time teaching specific skills required for the test. IEP teams feel compelled to qualify students who are unable to maintain the rate of learning demanded by the standards set by the test. Parents are led to believe quality becomes a single indicator of a single day's performance measure. Finally, the consequence to students is that their life's education can be judged inferior based on the performance on a single test. No wonder students with disabilities leave public education prior to graduation at an alarmingly higher rate compared to their non-disabled peers. There needs to be some rational expectation of quality performance that considers multiple forms of intelligence and provides gateways to adult life rather than profound barriers.

✓ Paperwork and process reduction

A barrier to implementation of innovation is the excessive paperwork and time required in duties outside the classroom. The intent of the Congress in IDEA 1997 to include general education in the decision-making and ownership of special education students by including great numbers of school personnel in the IEP team meeting has fallen "off track". Hours stolen from all students' instruction occur on a daily basis in both general education and special education as a result of long-lasting IEP team meetings. Some IEP team meetings last a full school day or longer with administrator, general education teacher, special education teacher, and assessment professionals unable to fulfill any other duties to the children. I would like the congress to practice "organized abandonment." Assume the position that additional requirements may be introduced after removing some of the current requirements that don't work. Currently the paperwork, process and procedures should be examined and redefined for efficiency and effectiveness to improve real instruction and not just document compliance. I remember when IDEA was re-authorized in 1997 with a claim of paperwork reduction. We special educators are in constant turmoil to create a belief that we can improve systems when what we deliver is complicated, time consuming and obstruct the educational processes and opportunities for all.

As long as school districts must fear process-oriented litigation, paperwork requirements will exist. True reform in this area must begin with reform of the due process system. One way to do this would be to require parents to bring their complaint ***first*** to the IEP team rather than begin with the adversarial and overly-complex due process hearing. In this way, disputes could be settled at the lowest and most productive level.

✓ **Full Funding of IDEA**

Funding IDEA at the 40 percent level is critical to improving services to students with disabilities as well as creating system-wide innovation that improves education for all and truly leaves "No Child Left Behind". Several issues arise from the low funding levels currently provided in IDEA. Without adequate funding, school districts have had to "Robin Hood" local funding sources to provide for students with disabilities. There is significant cost to the "typical" students. Certainly, school districts have a responsibility to provide a free and appropriate public education to students with disabilities, but other students should not have opportunities lost as a result of this need. Local revenue sources should not have to be exploited at the expense of our students who are in need of "supplemental aides and services." If supplemental really means that, then taking district resources from all students to provide for the shortfall in funding for students with disabilities shirks the responsibilities in creating legislation. Full funding will provide for all students by allowing partial recapturing of funds to school districts. Full funding will provide needed resources for students with disabilities.

As much as there has been some recent funding increases for our students who are age's kindergarten through 22, our preschool funding has been ignored. Research supports that critical ages for accelerating student outcomes exist in preschool and early grade levels of schooling. Attention and funding must be given to improving those programs for students with disabilities. These are the years critical to improving lifelong outcomes for students. Research supports, ESEA supports, and the Congress should support the improved education for early learning.

✓ Costs of Medically Fragile Students

Medically fragile students have joined and are welcomed into our public school setting. While we teach our personnel new skills with each complex medical issue and support our students and families with services extending well beyond the typical school year and school day, we are provided the same level of funding for students as any other student with a disability. The number and qualifications of personnel required to manage the students who have these serious challenges can easily exceed three to one. THAT RATIO IS THREE PERSONNEL TO ONE STUDENT. Most classrooms with serious medical issues require nursing service in the setting where the child is located. Currently, in my state, a medically fragile student receives less than $10,000 per school year, which translates into a daily rate of approximately $60. I wonder if the medical community would tolerate such a low level of funding for children their care. Certainly, the federal government has recognized that medical services are being provided in public schools because of the reimbursement of those services through programs such as SHARS and MAC. These add-on-funding streams barely make a dent in the cost of services required for support to the medically fragile in public schools. It is no wonder our applicants for positions are few and far between.

School districts have assumed extraordinary responsibilities as the result of diminished care through the medical community and families for all children from 0-21 years. We hire individuals to educate students when frequently the appropriate training of personnel is more medically based than educationally. Better delineation and boundaries for determining FAPE and adequate funding supports would help to offset the high costs of educating medically fragile students.

✓ Clearer Legislative Language

The financial burden of educating students with disabilities is skyrocketing. A typical residential placement for a student with disabilities in our school district is approximately $125,000. A few residential placements in a school district have long reaching effects on the ability to do more for the majority of special education students in a school community. Residential placements often care for our students with severe medical, emotional, or cognitive needs. Parents demanding "24 hour a day programs" or methodologies executed outside of the school environment for long hours create enormous personnel and financial strain on the system. Where does education end and parental, medical and societal responsibility begin? Clearer definition and guidance of what Congress meant by "Free Appropriate Public Education" could help define responsibilities and create reasonable equity between the systems.

Summary

In sum, the positive outcomes to our educational system have been substantial as a result of IDEA legislation. Students who previously were not allowed to attend school now have rightful membership in their community. Lives have been improved. More effective means and methods are available to schools to support those outcomes.

Our legislation needs to reflect some of the known methods. Universities have made effective first steps in establishing a strong research base. Fiscal bridges need to be built through IDEA Part D to focus on practice that is supported by research. Those practices can change systems.

The law needs to reflect Positive Behavioral Supports and Interventions, Curriculum Based Measurement and Problem-Solving Teams such as the Bilingual Child Study as a part of general education instruction and environments, as IDEA 1997 did for general education curriculum.

Full funding of IDEA would benefit all students by providing relief from local budgets stretched thin by skyrocketing costs. What person would believe that quality supports and services are provided with funding so limited?

Insist on a system that is focused on quality of instruction rather than compliance and process. Simplify. Revise the discipline standards and requirements to reflect appropriate options for educators and a unified system of handling unsafe behaviors. Remove the constant threat of litigation over procedural compliance and focus it rather on accountability.

Clarify FAPE. Make it easier for parents and schools to determine appropriate outcomes. Help with the boundaries of public schools. What really constitutes a Free Appropriate Public Education?

Promote practice that really separates disability from other educational issues. Curriculum Based Measurement and problem solving teams separate instructional, curriculum, and environment issues from disabilities. Build a system with assessment practices that provides educational opportunity and doesn't spend millions of dollars on information that cannot be translated into effective instructional programs.

Accountability systems should include special education students. High stakes assessment, however, is not the only quality indicator of our nation's schools. Students should not be penalized for the lack of ability to perform on a standardized test. True quality alternative pathways ensuring graduation for our students with disabilities need to be made. Millions of student futures are at risk. Build a system with encouragement to remain in school, not punishment for disability, poor instruction, or unforgiving environments.

Thank you.

APPENDIX G - DOCUMENTS PROVIDED FOR THE RECORD BY DR. RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS

Council for Children with Behavior Disorders
Fact Sheet on Emotional Disturbance as a Disability

CCBD

Council for
Children with
Behavioral
Disorders

The Council for Children with Behavioral Disorders (CCBD) is the division of the Council for Exceptional Children (CEC) committed to promoting and facilitating the education and general welfare of children and youth with emotional or behavioral disorders.

Emotional disturbance is a real disability. Much like physical disabilities, health disorders, or sensory disorders, emotional disturbance has varied etiologies and trajectories, but always has a significant impact on the life of the affected child and his or her family. Furthermore, like physical, health, or sensory disorders, treatment for emotional disturbance is most effective when begun early, when evidence-based practices are used, and when multiple forms of intervention are used.

Facts related to emotional disturbance as a disability in children and youth:

- Students with emotional disturbance typically have significant academic deficiencies, which often exacerbate behavior problems and lead to academic underachievement and school dropout (Chesapeake Institute, 1994; Kauffman, 1997). Evidence shows that remediating academic deficits in reading, writing, and mathematics is a critical factor in school success for these students, and is correlated with improvement in school behavior (e.g., Dunlap, Kern, dePerczel, Clarke, Wilson, Childs, White, & Falk, 1993).

- Students who exhibit behavior problems serious enough to warrant intervention comprise approximately 10 percent of all children; about 3-5 percent of these could be judged to be emotionally disturbed (Knitzer, Sternberg, & Fleisch, 1990). Unfortunately, evidence suggests that only about 20% to 30% of all children and youth with emotional/behavioral disorders are served in special education (Heward, 2000), meaning that the majority of children with emotional/behavioral disorders are not receiving the services needed to effectively manage their disability. These students undoubtedly create discipline and management problems for teachers and administrators, yet traditional responses to these problems (suspension, placement in alternative programs, etc.) typically are ineffective in changing the course of the problematic behavior.

- 1 in 10 children and adolescents suffer from some form of mental illness serious enough to cause impairment in functioning, yet fewer than 1 in 5 of these students receive needed treatment (United States Surgeon General, 2001).

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- Suicide is the third leading cause of death in adolescents (CDC, 1999). Research shows that over 90% of children and adolescents who commit suicide have a mental disorder (Surgeon General, 2001)

- A small percentage of children have emotional disorders so serious that schools alone cannot effectively meet their needs. Unfortunately, availability of coordinated interagency services (i.e., services from juvenile justice, mental health, case management, etc.) is the exception, not the rule. Relatively few schools and families have access to the comprehensive services these children need.

- The quality and duration of intervention is positively correlated with prognosis. The more comprehensive the intervention (e.g., services to both child and family), and the longer the duration of services, the better the outcomes (Walker, Colvin, & Ramsey, 1995). Services provided in isolation or services that are terminated according to arbitrary criteria that are unconnected to child status have little impact on the student's overall functioning.

- Research clearly shows that coordinated interagency services can improve prognosis for children and youth with emotional disorders (e.g., National Technical Assistance Center for Children's Mental Health, 1998). Yet, significant obstacles interfere with the ability of agencies to provide collaborative services. Obstacles include funding, conflicting governing bodies and eligibility criteria, and personnel shortages. The few available models of wraparound services provide convincing evidence of both the need and the benefit of these types of services.

- Early intervention is a critical variable in determining prognosis for children with emotional disturbance (Sprague & Walker, 2000). Early intervention can deflect the potentially ravaging effects of emotional disturbance. The longer the delay in identification and treatment of emotional/behavioral disorders, the less likely curative intervention will be possible. The current "wait-to-fail" model in which children with emotional disturbance are not typically identified before grade 3 contradicts all evidence on the relationship between intervention timelines and prognosis.

Given these facts, CCBD recommends the following actions:

1. We urge Congress to continue to include in IDEA the disability category of 'emotional disturbance' to help ensure that children and adolescents with emotional or behavioral disorders will continue to have access identified to a free appropriate public education.

2. We urge that the terminology for this disability become identified in IDEA as "emotional or behavioral disorders," an appropriate educational term for this disability, which has been widely used in professional literature, and which accurately describes the students served and needing services. We also urge adoption of the more specific and culturally sensitive definition of emotional or behavioral disorders as developed by the National Mental Health and Special Education Coalition,

published in the U.S. Department of Education "notice of inquiry" in the *Federal Register* (February 10, 1993). Adoption of this definition would facilitate more accurate identification and assessment of students who could benefit from special education services for problems related to disturbances of emotional or behavior.

3. Ensure that no child is left behind. The discipline provisions of IDEA '97 were carefully crafted to allow school officials the latitude of applying school disciplinary procedures to students with disabilities, while maintaining the protection of a free, appropriate public education for all children with disabilities. No child, and particularly no child with a disability, should be denied access to an education. We urge Congress to allow all of the provisions of IDEA '97, including discipline, to remain untouched.

4. We support the emphasis on academic achievement that is central to the "No Child Left Behind Act." We encourage academic accountability for all teachers, including teachers of students with emotional disturbance.

5. The "No Child Left Behind Act" mandates highly trained teachers in all classrooms. This standard is particularly important for students with emotional disturbance, who need teachers that are well prepared to use evidence-based methods to manage behavior, and to teach reading, math, and writing to struggling learners.

6. Schools should be required to develop a screening, assessment and identification process to properly identify young children with mental or emotional disorders, just as schools identify children with hearing and vision needs (Surgeon General, 2001). Furthermore, schools should be encouraged to use proven early intervention models. The First Step to Success program is an example of an early intervention program that has conclusive evidence of effectiveness in remediating early symptoms of emotional/behavioral disorders at home and school (Golly, Stiller, & Walker, 1998).

7. Improve related services for children and youth with emotional disturbance. Too often, related services are provided only on a limited-time basis (e.g., a predetermined number of counseling sessions), or are not provided (e.g., substance abuse treatment). Reasons for poor related services include costs, lack of recognition that these services are needed for the student to benefit from special education, and lack of qualified service providers.

8. Assist schools in providing adequate services by passing legislation to ensure full federal funding of IDEA.

9. We urge Congress to explore ways to more effectively coordinate services from multiple agencies using proven models. The Children and Adolescent Service System Program model, funded by the National Institute of Mental Health, is an proven example of what works in collaborative service delivery (Stroul & Friedman, 1986).

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School Discipline and IDEA 97:
What Works is Keeping Kids in School

Council for Children with Behavioral Disorders

The Council for Children with Behavioral Disorders (CCBD) is the division of the Council for Exceptional Children (CEC) committed to promoting and facilitating the education and general welfare of children and youth with emotional or behavioral disorders.

In 1997, Congress passed the Individuals with Disabilities Education Act Amendments (IDEA 97), the most sweeping changes to the law since its inception in 1975. Among the most important changes were the IDEA 97 provisions governing the discipline of students with disabilities. Those provisions brought together in statute for the first time all of the rules that apply to students with disabilities faced with disciplinary action, seeking "a balanced approach to the issue of discipline of children with disabilities that reflects the need for orderly and safe schools and the need to protect the right of children with disabilities to a free appropriate public education (FAPE)" (Office of Special Education Programs, 1997). Specific provisions of the amendments include:[1]

- *Short-Term Removal:* Students with disabilities are subject to the same set of disciplinary consequences as all other students for any disciplinary removal less than ten days, if the removal cannot be considered a change of placement.
- *Multiple Suspensions:* Nothing in IDEA 97 prohibits multiple suspensions summing to more than ten days, so long as all services that the student is entitled to in the IEP are provided once the removals exceed ten days.
- *Interim Alternative Educational Setting:* School personnel may place a student with disabilities in an interim alternative educational setting for drugs or weapons for up to 45 days. For a student deemed dangerous, school personnel may request a hearing officer to remand the student to an interim setting for up to 45 days.
- *Manifestation determination:* For any disciplinary event cumulating to ten or more days, schools and school districts must conduct or review a functional assessment or behavior plan.

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[1] Due to space limitations, descriptions of IDEA 97 disciplinary provisions are brief, omitting the full complexity of the regulations. More complete descriptions can be found in a number of sources, including Hartwig & Ruesch (2000); Johns (1998); and Yell (1998)

- *Functional assessment/Individual behavior plan:* For any disciplinary event cumulating to ten or more days, schools and school districts must conduct or review a functional assessment or behavior plan.

IDEA 97 was intended to bridge the gap between the treatment of special education and all other students in the area of school discipline. Yet it has also created controversy among some critics who charge that these provisions create a double standard that "ties the hands" of school administrators with respect to school discipline. .

Why We Need to Oppose Attempts to Amend IDEA 97

There is no question that school safety is a critical concern, and school administrators have the right, indeed the responsibility to maintain the discipline of schools. Any procedure that truly threatened the safety or discipline of schools would require serious examination.

But, the objections of a vocal minority notwithstanding, the disciplinary provisions of IDEA 97 do not constitute a threat to school order or safety. The majority of educators recognize that these provisions provide a valuable tool in assisting schools in addressing the behavior of students with disabilities, and appear to have more evidence for their effectiveness than traditional disciplinary procedures like suspension and expulsion. These important facts should be kept in mind:

- *All three branches of government have consistently asserted the right of students with disabilities to protections from arbitrary removal or change of placement.* The disciplinary provisions of IDEA97 did not simply emerge in 1997. Rather, the provisions are based on a history of case law and administrative decisions that go back to the initial passage of special education law in Congress.

- *There is little or no evidence that the disciplinary provisions of IDEA 97 significantly limit the ability of administrators to discipline students.* In a national survey published in 2000 by the U. S. General Accounting Office (GAO), 75% of school principals stated that special education disciplinary procedures did not have a negative impact on their ability to maintain discipline and order.

- *There is no evidence that special education students are given greater leeway in their behavior as a result of IDEA disciplinary provisions.* The GAO report noted that students with disabilities are subjected to school suspension at about the same rate as students without disabilities. In fact, in a number of studies of state data, students with disabilities are suspended more than would be expected given their proportion in the population.

- *There is no evidence that suspension and expulsion make a positive contribution to school safety or improving student behavior.* Criticisms of IDEA disciplinary provisions make the assumption that those provisions deprive disciplinarians of an important tool in maintaining school order and safety. Yet there is no evidence that suspension and expulsion make a positive contribution to school safety. Rather, the evidence indicates that suspension and expulsion are correlated with school dropout, that they are used inconsistently and often in place of a positive climate, that minorities are consistently overrepresented in school discipline, and that school removal may increase rates of future disruption for some students.

- *The best current evidence indicates that the most effective and promising programs for deterring school violence are preventive and comprehensive, and involve parents, students, and the community.* Panels of national experts in youth violence prevention have been convened by Congress, the U. S. Departments of Justice and Education, the White House, and the Surgeon General. Not one of these panels recommended suspension and expulsion as effective methods for ensuring school safety. Rather, experts have consistently recommended approaches such as violence prevention or social problem-solving curricula, improved behavior management, mentoring, and restorative justice that teach students alternatives to violence for solving personal and interpersonal problems.

The disciplinary provisions of IDEA 97 come into conflict with school discipline only if discipline is defined as school exclusion - suspension and expulsion. There is no conflict between IDEA 97 and effective procedures that keep students in school and teach them what they need to know to solve problems without violence.

Conclusions

Eliminating the IDEA disciplinary protections in order that zero tolerance might be applied to a greater extent to students with disabilities might result in a system that appeared more fair, in the sense of treating all students equally. But given what we know about suspension and expulsion, it would also likely reduce the overall quality of American public education, by exposing more students to disciplinary procedures that are ineffective and perhaps discriminatory.

A unified system of discipline for special and general education may well be a valuable goal. But it is essential that such a system be both fair and effective, relying on strategies and interventions that, in the Bush Administration's words, are "research-based." Relying on research-based best practice evidence, such a unified system would:

- *Minimize the use of suspension and expulsion and implement a graduated system of discipline, matching the severity of offense and consequence;*

- *Implement preventive approaches to teach all students alternatives to violence for resolving conflict;*

- *Use team-based approaches to identify students at-risk for violence and intervene to reconnect such youth with the school community;*

- *Utilize a broad array of effective responses for students with the most challenging emotional and behavioral problems;*
- *Reduce or eliminate minority disproportionality in school discipline; and*
- *Use only those interventions and programs that have been validated as truly effective in improving student behavior and guaranteeing school safety.*

Politically popular zero tolerance strategies appeal to those who believe that there is a quick fix for the complex problems of school violence and disruption. But research, expert opinion, and federal reports all concur that problems of school discipline and school violence cannot be fixed by simply removing ever greater numbers of students. Rather, effective violence prevention requires that we devote attention and resources to implementing practices that are fair, effective, and non-discriminatory in order to improve the safety and civility of our schools for all students.

--Russ Skiba, 9/29/01

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Council for Children with Behavior Disorders
Fact Sheet on The Need for Training for Special and General Educators

CCBD

Council for Children with Behavioral Disorders

The Council for Children with Behavioral Disorders (CCBD) is the division of the Council for Exceptional Children (CEC) committed to promoting and facilitating the education and general welfare of children and youth with emotional or behavioral disorders.

The need for high-quality preservice and inservice teacher training for both general and special education teachers has been well documented. In 2001, 33,000 special education teaching positions were staffed with uncertified personnel, and an additional 4,000 positions were vacant. Furthermore, many general educators receive little or no preparation in addressing the needs of students with disabilities. One survey reported that less than 20% feel prepared to meet the needs of students with diverse learning needs (White House, 2002). Undertrained teachers are less likely to employ proven strategies, and may rely on ineffective instructional and management practices (Gunter & Denny, 1996; Kauffman, 1996). Given the goal of a highly qualified teacher in every classroom by the end of the 2005-2006 school year as legislated in the "No Child Left Behind Act" (ESEA, 2001), efficacious teacher training is a critical need.

Evidence shows that both preservice and inservice professional development programs must be carefully planned, include both general and special educators, and it must be completed in partnership with school districts and institutions of higher education (Burstein, Kretschmer, Smith, & Gudosk, 1999; Sparks & Hirsh, 1997). Training programs must address the need for both general and special educators to learn effective behavior support strategies while ensuring rigorous adherence to academic standards.

One factor that contributes to teacher shortages is teacher attrition. Research has shown than approximately 6% of special education teachers leave the field annually, and another 7% transfer to general education (Council for Exceptional Children, 2001). Fortunately, research has delineated practices to help reduce attrition. For example, teachers are more likely to remain in the field when they are sufficiently prepared for the demands of the job, when they teach in schools that encourage collaborative practices, when they have administrative support, and when they have access to learning through collegial networks (Gersten, Keating, Yovanoff, & Hariness, 2001; Sugai et al, 1997).

To retain teachers, training for administrators is also important. Given that lack of administrative support is one frequently-cited reason for leaving special education, it is critical that administrators participate in professional development activities that address effective practices in those areas that are related to teacher retention.

Based on these facts, CCBD recommends the following:

1. Most states require only generic special education certification for special education teachers. However, the need for specialized training for teachers of students with emotional/behavioral disorders has been well documented, and is correlated with more positive outcomes for students. We strongly encourage states, districts, teacher preparation programs, and policy makers to develop creative programs to prepare specialists, particularly specialists for students who exhibit the challenging behaviors associated with emotional/behavioral disorders.

2. Ensure that all school personnel have access to professional development efforts that address evidence-based practices in behavior management and discipline, assessment, and instruction for diverse populations of students.

3. Ensure that all preservice teacher and administrator preparation programs, including alternative certification programs and other routes to certification, are held accountable to rigorous standards and outcomes.

4. Ensure ongoing professional development for all teachers and administrators to help educators remain current in research-based knowledge and skills.

5. Encourage professional development activities that utilize creative and varied delivery options, and that involve mentoring and coaching.

6. Require standards and accountability from individuals, organizations, agencies, and companies that provide professional development.

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APPENDIX H - WRITTEN STATEMENT OF RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS

Testimony of Dr. Russell Skiba

"Rethinking School Discipline: Keeping Schools Safe Through Instruction, Not Exclusion"

Hearing before the Subcommittee on Education Reform
Committee on Education and the Workforce
United States House of Representatives

May 8, 2002

Good morning Mr. Chairman and Members of the Subcommittee. My name is Russell Skiba, and I am a faculty member in the School Psychology Program at Indiana University. I am also director of the Safe and Responsive Schools Project, currently in its third year of funding with the Office of Special Education Programs of the US Department of Education. The funds that support the work I am going to tell you about come from Part D of IDEA. Part D is made up of 6 discretionary programs that are critical to the effectiveness of the Part B state grant program. They support the infrastructure of research, personnel preparation, technical assistance and support for parents. These programs enable research based practices to reach the classroom.

I am here today to talk about our experience with that project and its implications for school safety and school discipline, in particular for students with disabilities. The experience of that project, as well as an examination of IDEA's disciplinary provisions, both lead to the same conclusion: that it is possible to develop sound disciplinary procedures for both general and special education that do not require cessation of services for students with disabilities.

In particular, I will describe three key findings of this project, and of a paper written for the Fordham Foundation as part of their *Rethinking Special Education* conference. Those findings are:

- First, that we have the knowledge and the skill to make our schools effective instructional environments with a minimal use of suspension and expulsion;
- Second, that we currently have no evidence that suspension and expulsion make a positive contribution to school safety or improved student behavior; they may in fact have significant unintended negative consequences for students and school climate; and
- Third, that we can have safe schools and well disciplined schools under current law, without amending the Individuals with Disabilities Education Act.

The issue of school discipline, especially for students with disabilities, has been a difficult and controversial one. I believe this issue is so difficult because it represents the apparent conflict of two strongly held values. In response to earlier abuses, all three branches of government have affirmed and reaffirmed the right of students with disabilities to fully participate in education in the appropriate least restrictive environment. More recently, responding to the very real and very serious threat of violence in our nation's schools, Congress passed the Gun Free Schools Act, mandating school expulsion for bringing firearms to school. Since the passage of that act, Congress has wrestled with the apparent contradiction between preserving the right of students with disabilities to a free and appropriate public education, and preserving the school's ability to remove students who pose a significant threat to school safety.

It was to address this apparent contradiction that the Safe and Responsive Schools Project was funded, to develop comprehensive systems of discipline that meet the needs of all students while preserving the safety or our schools. Over the past three years the Safe and Responsive Schools Project has worked with elementary, middle, and high schools to develop and test a process enabling schools to begin to comprehensively restructure their school discipline and school violence prevention efforts. Working from a three-tiered primary prevention model, we have worked with rural, suburban and urban schools, including one school that joined our project this year after having been the site of a tragic school shooting last year (Further information about the project can be found on our website: **www.indiana.edu/~safeschl)**

Our assumption throughout this process is that members of the school community—teachers, administrators, parents, and students—are tremendously capable problem-solvers who can, given the time and knowledge, identify their own most serious issues and choose appropriate interventions to address those issues. Over their first year of involvement in the project, participating schools formed Safe and Responsive School Teams that engaged in a year long needs assessment process, surveying students, teachers, and parents, and conducting an inventory of their available resources and strategies for violence prevention. At the same time, those teams reviewed the knowledge base concerning best practice in discipline and violence prevention in schools, including fact sheets on a variety of topics prepared by project staff. By the end of their first year, the teams used all of that information to engage in a strategic planning process culminating in the development of a comprehensive Safe and Responsive School Plan. Those plans were implemented and evaluated in the second and third year of the project.

We have learned a tremendous amount in this process about a team-based approach to restructuring school discipline. We learned that it is possible for schools to think comprehensively about discipline and violence prevention—all of the schools successfully developed plans tailored to meet their own needs. The core elements of the plans are very different from school to school—some emphasizing instruction in bullying prevention and conflict resolution, such at the program at McCormick's Creek Elementary School, others emphasizing a positive climate and rewards for good citizenship, such as the Wall of Fame at Edgewood Junior High School. We have learned that the most successful schools tended to specialize, each school focusing on one particular aspect of their plan and developing that over time.

We are extremely encouraged by the outcomes after one year of implementation of the school plans. Among our five pilot schools in Indiana, out-of-school suspensions for the entire school showed a decline ranging from 40% to 60%. Gains extended as well to students with disabilities. One middle school showed a drop from 39 suspensions for students with disabilities in 1999-2000 to 0 in 2000-2001.

I'd like to highlight the experience of one of our schools in Owen Valley High School. During their planning year, the team identified as one of its major problems the tremendous numbers of referrals to the office, especially for minor misbehavior. There was actually a line of chairs outside the office in which students lined up to see administrators for their referrals. To respond to this issue, the school developed an innovative new program they called the Intervention Room. Staffed by both a general and a special education teacher, the Intervention Room functions in part as an resource room for students with disabilities needing academic assistance, but more importantly, as an option for teachers for disruptive students, both disabled and non-disabled, prior to a referral to the office. When students are referred to the intervention room for behavioral issues, they first meet with the teachers in the intervention room. Sometimes a simple problem, such as lack of materials, can be solved simply and the student returned immediately to his or her classroom. In other cases, where there is a more substantial conflict, the teachers in the intervention room talk with the student, attempt to help the student take responsibility for his or her behavior, and hopefully assist the student in returning to the classroom with a plan for avoiding problems in the future. Table 1 presents overall data for Owen Valley High School, showing very positive results for both the entire school, and in particular for students with disabilities. Perhaps most significantly, since last year there have been no chairs lined up outside the main office.

Table 1: Owen Valley High School: Changes in Disciplinary Data from 1999/2000 to 2000/2001

	1999/2000 SCHOOL YEAR	2000/2001 SCHOOL YEAR	PERCENTAGE CHANGE
Total Number of Suspensions	397	171	**-56.9%**
Number of In School Suspensions	115	13	**-88.6%**
Number of Out of School Suspensions	282	158	**-43.9%**
Number of Expulsions	27	7	**-74.0%**
Average Length of Expulsion (in days)	94.3	57.1	**-39.4%**
Number of Dropouts	15	12	**-20.0%**
Number of Students with an IEP Suspended	113	31	**-72.5%**
Number of Students with an IEP Expelled	5	0	**-100%**

Note: These numbers are based on figures reported to the state of Indiana by the Spencer Owen Community School Corporation.

These data are preliminary, pending the second year of outcomes this year. But they provide a hopeful sign that it is possible to develop a system of discipline based, not on cessation of educational opportunity, but on prevention, early identification, and an appropriate continuum of effective consequences. These data tell us that there is nothing in current IDEA disciplinary policies that prevents schools from continuing to improve the safety and disciplinary climate of our schools. Finally, these improvements show that positive discipline and academic excellence go hand-in-hand: this year Owen Valley High School was one of six schools in the nation that won the prestigious New American High School Award from the US Department of Education in recognition for its reform efforts and increased academic excellence.

These conclusions are consistent with a paper that just appeared in the journal Behavioral Disorders, entitled *Special Education and School Discipline: A Precarious Balance.* I was commissioned by the Fordham Foundation and the Progressive Policy Institute to write that paper for the Rethinking Special Education conference held here in Washington; it was intended as a comprehensive review of our best knowledge concerning discipline in both general and special education. If you would, please allow me to describe the most important conclusions and implications of that paper.

The disciplinary provisions of the Individuals with Disabilities Education Act Amendments of 1997 brought together in statute for the first time all of the rules that apply to students with disabilities faced with disciplinary action. Specific provisions of the amendments included descriptions of procedures governing removal for more than 10 days, interim alternative educational settings, manifestation determination, and functional assessment and individual behavior plans.

The disciplinary provisions of IDEA 97 were intended to bridge the gap between the treatment of special education and all other students. Yet they have also created controversy among those who charge that these provisions create a double standard that "ties the hands" of school administrators with respect to school discipline.

There is no question that school safety is a critical concern, and school administrators have the right, indeed the responsibility to maintain the discipline of schools. Any procedure that truly threatened the safety or discipline of schools would require serious examination. Yet a close examination of our best knowledge about school discipline in both special education and general education does not in any way support dismantling the disciplinary provisions of IDEA:

- *First, there is little or no evidence that the disciplinary provisions of IDEA 97 significantly limit the ability of administrators to discipline students.* In a national survey published in 2000 by the U. S. General Accounting Office (GAO), 75% of school principals stated that special education disciplinary procedures did not have a negative impact on their ability to maintain discipline and order.

- *Second, there is no evidence that special education students are given greater leeway in their behavior as a result of IDEA disciplinary provisions.* The GAO report noted that students with disabilities are subjected to school suspension at about the same rate as students without disabilities. In fact, in a number of studies of state data, students with disabilities are suspended more than would be expected given their proportion in the population.

- *Third, and perhaps most importantly, there is no evidence that suspension and expulsion make a positive contribution to school safety or improving student behavior.* Criticisms of IDEA disciplinary provisions make the assumption that those provisions deprive disciplinarians of an important tool in maintaining school order and safety. Yet there is no evidence that cessation of educational services through suspension and expulsion makes a positive contribution to school safety or in any way improves student behavior

  Rather, the evidence indicates that suspension and expulsion are moderately correlated with school dropout and that there is a high rate of repeat offending among those students who are suspended, typically between 30% and 50%. From a behavioral standpoint, this rate of recidivism suggests that suspension and expulsion are simply not effective procedures for changing behavior. Indeed, one set of researchers found that suspension in sixth grade predicted more misbehavior in middle school, leading those researchers to conclude that, for some students, suspension may act more as a reinforcer than a punisher. Finally, there is no evidence that schools who use suspension and expulsion more are safer schools. If anything, the available evidence suggests that greater use of suspension is associated with poorer teacher ratings of school climate, less adequate school governance, overreliance on discipline as opposed to instruction, and higher student-teacher ratios.

  One of the most serious concerns about the use of suspension and expulsion is the consistent overrepresentation of minority students, in particular African American students. Since that disproportionality was first documented by the Children's Defense Fund in 1975, numerous published studies of school discipline have, *almost without exception*, found rates of school suspension and expulsion that are 2-3 times higher for African American than for white, non-Hispanic students. This does not appear to be due to economic status—racial differences in discipline persist even when statistically controlling for SES. Nor can it be explained away by rates of misbehavior among African American students. If anything, research in this area indicates that African Americans tend to be disciplined more severely for less serious and less objective behaviors.

- *Finally, the best current evidence indicates that the most effective and promising programs for deterring school violence are preventive and comprehensive, and involve parents, students, and the community.* Panels of national experts in youth violence prevention have been convened by Congress, the U. S. Departments of Justice and Education, the White House, and the Surgeon General. Not one of these panels has recommended suspension and expulsion as effective methods for ensuring school safety. Instead, these panels have consistently recommended approaches such as violence prevention or social problem-solving curricula, improved behavior management, mentoring, and restorative justice that teach students alternatives to violence for solving personal and interpersonal problems.

Please understand that I am in no way calling for a moratorium on the use of suspension and expulsion. There are clearly situations of danger that require that we remove a child from the school for some period of time. I have worked in many schools at all levels, and I don't meet administrators who tell me they love to kick kids out of school. Rather, schools that overuse suspension and expulsion do so because they simply don't know what else to do. The work of these panels shows that we know what the effective strategies are for coping with disruptive students—our problem is in ensuring that all of our schools have access to that knowledge of our most effective practices.

In conclusion, eliminating the IDEA disciplinary protections in order that zero tolerance might be applied to a greater extent to students with disabilities might result in a system that appeared more fair, in the sense of treating all students equally. But given what we know about suspension and expulsion, it would also likely reduce the overall quality of American public education, by exposing more students to disciplinary procedures that are ineffective and perhaps discriminatory.

Here are three recommendations I would leave you with:

- First, *increase the investment in IDEA for developing and implementing effective research based practices related to behavior.* The most common complaint among teachers in our schools today is that they were simply not prepared to deal with student behavior. Just as teachers are being trained in effective reading instructional practices, we need to increase research and training on effective, *proactive* practices related to behavior. Currently, our investment in the discretionary programs of IDEA represent a tiny fraction (about 4%) of our investment in Part B, far less than the standard industry practice of a 10% investment in R & D. Funding for discretionary programs should be indexed to Part B, to ensure research to practice in this area and to ensure that all teachers have training in effective behavior management and strategies. There is no reason why every school in the country cannot have the kind of results I showed you, given sufficient support for research, and for training in best practices in preventing school disruption.

- Second, *educate stakeholders on effective and ineffective methods of discipline.* If we are interested in a more effective and more equitable system of discipline for all children, we need to take very seriously the call of the No Child Left Behind Act to make sure that our schools use only research-based practices. In the area of school discipline, this would clearly mean reducing our use of ineffective practices like suspension and expulsion, and turning instead to preventive and instructional strategies for school discipline that keep kids and school and teach them what they know to get along. The experience of the schools that participated in Safe and Responsive Schools has been that, as the number of effective options for responding to school disruption goes up, the use of negative and exclusionary discipline goes down. In particular, schools that have begun using effective approaches to school discipline might be called upon to train other schools that need that knowledge.

- Finally, *work with schools across the nation to ensure the uniform implementation of the Individuals with Education Disabilities Act*. There is clearly some confusion among some schools about what can and cannot be done with respect to the discipline of students with disabilities. The Office of Special Education Programs might establish additional training about IDEA disciplinary provisions, and about how to integrate their practices for students with and without disabilities. I would suggest that a system of consultation, a hotline if you will, be set up, establishing national or state-level offices to provide technical assistance to schools facing difficulties related to school discipline, especially relating to students with disabilities. Such a system might help alleviate miscommunication and misunderstanding what can and should be done in the area of school discipline.

The experience of Owen Valley High School and the other schools participating in the Safe and Responsive Schools project has shown us that there *is* no inherent conflict between continuing services for students with disabilities and preserving the safety of our schools. The apparent conflict arises only if we equate school discipline with cessation of educational opportunity through suspension and expulsion. Our best research, as well as the experience of forward looking schools like OVHS, tells us that school discipline, for any child, disabled or non-disabled, ought to de-emphasize those procedures like suspension and expulsion that reduce educational opportunity, especially for minority students. Instead, schools that are most effective in preserving safety and improving student behavior have learned to use empirically validated prevention practices that seek to keep all students in school, and teach both disabled and non-disabled students what they need to know to avoid violence, to get along with their peers, and to succeed in school and society.

Thank you for allowing me this opportunity to share these results, and I would be happy to answer any questions during the question and answer period.

Committee on Education and the Workforce

Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)

Your Name:		
1. Will you be representing a federal, State, or local government entity? (If the answer is yes please contact the committee).	[✓ Yes]	No
2. Please list any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1999: **Safe and Responsive Schools Project (Personnel Preparation Grant under Individuals with Disabilities Education Act, CFDA 84.325N Projects Of National Significance,** **Grant Award #: H325N990009** **Grant Award Period: 8/20/99 -8/19/02**		
3. Will you be representing an entity other than a government entity?	[✓ Yes]	No
4. Other than yourself, please list what entity or entities you will be representing: **Council for Children with Behavioral Disorders**		
5. Please list any offices or elected positions held and/or briefly describe your representational capacity with each of the entities you listed in response to question 4: **None**		
6. Please list any federal grants or contracts (including subgrants or subcontracts) received by the entities you listed in response to question 4 since October 1, 1999, including the source and amount of each grant or contract: **None**		
7. Are there parent organizations, subsidiaries, or partnerships to the entities you disclosed in response to question number 4 that you will not be representing? If so, please list: **Council for Exceptional Children (parent organization of the Council for Children with Behavioral Disorders**	[✓ Yes]	No

Signature: Date: 5/7/02

Please attach this sheet to your written testimony.

APPENDIX I - DOCUMENTS PROVIDED FOR THE RECORD BY DR. RUSSELL SKIBA, ASSOCIATE PROFESSOR, INDIANA UNIVERSITY/BLOOMINGTON, BLOOMINGTON, INDIANA, AND ON BEHALF OF THE COUNCIL FOR CHILDREN WITH BEHAVIORAL DISORDERS

To: Rep. Mike Castle, Representative Dale Kildee
From: Dr. Russell Skiba
Date: May 17, 2002
RE: Over-identification and over-representation in special education

Dear Rep. Castle and Rep. Kildee:

I am grateful for the opportunity to have testified as part of IDEA Reauthorization Hearings as a representative of the Council for Children with Behavioral Disorders, and hope that testimony was helpful.

If I may, I would like to make a late reply to one of the questions you framed during the hearing, concerning over-identification. I believe the question addressed both over-identification in general, and the over-representation of minorities in particular, in special education. I would like to append an answer to my testimony addressing that question.

Although over-identification may be an issue in some disability categories, in fact the opposite seems to hold true for one disability category: *serious emotional disturbance*. As can be noted from the CCBD Fact Sheet read into the record, our best professional judgment has been that 3-5% of the student population could be identified as emotionally disturbed; the federal government estimated that 2-3% of the school population would be served as emotionally disturbed under IDEA. Yet the identification of students with emotional disturbance has consistently hovered around 1% nationally.

The more important question however may be ***when*** students with emotional disturbance are identified. Students with emotional disturbance tend not to be identified until the late elementary grades or later. Part of the problem may be definition: the inclusion of the word "serious" in the official federal definition of emotional disturbance may encourage waiting until the problem becomes serious. It may also be that teachers who are reluctant to stigmatize a child will wait until the problem becomes severe before identification. But, whatever the reason, by the time that many students with emotional and behavioral problems are served in special education, their problems have become extremely severe and often resistant to even our best interventions.

It is well-documented that we can improve our chances of successful intervention the earlier we intervene with emotional and behavioral problems. The work of Dr. Hill Walker and his colleagues in the First Steps program shows that it is possible to dramatically increase our success with emotionally and behaviorally disordered students through early identification and intervention.

The idea of early intervention is an encouraging theme running through the reauthorization of IDEA. I would strongly encourage you to extend this focus on early identification and early intervention to students with emotional disturbance as well. The earlier our intervention, the greater are our chances of improved outcomes for students with emotional disturbance.

I have also attached a report on minority disproportionality in special education completed by the Indiana Education Policy Center in response to a request from the President's Commission on Excellence in Special Education. To summarize both that position paper and the recent report of the National Academy of Sciences panel, the overrepresentation of minority students in special education is highly complex, and will likely not be solved by simply resorting to caps in service for the affected groups. Rather, the recommendations from the NAS stress early intervention, increased support for classroom teachers from school psychologists and special education teachers, and improved training in classroom behavior management for all teachers.

Again, thank you for the opportunity to contribute to your deliberations, and I wish you the best in your work on this extremely important piece of legislation.

Sincerely,

Russell J. Skiba, Ph.D.
Associate Professor
Director, Safe and Responsive Schools Project

Attachment: Report by Indiana Education Policy Center to PCESE on Minority Disproportionality

Responding to the Complexity of Minority Overrepresentation:

The Indiana Disproportionality Project

A Report to the President's Commission on
Excellence in Special Education
May 1, 2002

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EXECUTIVE SUMMARY

Although the presence of minority overrepresentation has been well documented, the full complexity of the problem has not yet been fully understood, nor is there a clear picture of the causes of disproportionality. This report summarizes a three-year study conducted by the Indiana Education Policy Center for the Indiana Department of Education Division of Special Education on the status of minority disproportionality in special education in Indiana in the context of the national discussion on disproportionality. Using enrollment and disciplinary data provided by the Division of Special Education, three years of study have led to the following conclusions:

- ➢ *Disproportionality is most severe among African American students, especially in the disability categories of mental retardation and emotional disturbance.*
- ➢ *African American students are underrepresented in regular classroom placements, and over-represented in more restrictive placements.*
- ➢ *Disproportionality is not uniformly distributed, but appears to be due to the influence of significant disproportionate representation among a relatively small number of local administrative units.*
- ➢ *A number of possible causes of minority disproportionality in special education have been identified, but these relationships are not well investigated, and probably highly complex in their interactions. In particular, there appear to be important variables in three areas that contribute to minority disproportionality in special education: demographic factors, differential educational opportunity, and the referral and placement process.*

The most recent analyses of the project have found that although school personnel attribute disproportionate representation primarily to issues of poverty and academics, statistical analyses indicate that, even when controlling for these and other demographic variables, race itself remains a significant factor in predicting who is served in special education.

The disproportionate representation of minority students is both a significant and complex issue. It is highly unlikely that direct solutions such as setting caps on enrollment by group will be effective in addressing the issue, and may even exacerbate the problem. Rather, this and previous reports would suggest that remediation might best be targeted as follows:

- *Improve and standardize data collection.*
- *Implement early identification and intervention procedures.*
- *Provide increased resources at the building level to address the diversity of student needs.*
    - *Improved training of both special and general educators in culturally competent instructional and behavioral methods.*
    - *Increased support by school psychologists and special education teachers.*
    - *Improve the presence and efficacy of pre-referral teams.*
- *Monitor the progress of students in special education toward reintegration into the regular curriculum.*
- *Implement low inference assessment strategies.*

RESPONDING TO THE COMPLEXITY OF MINORITY OVERREPRESENTATION: THE INDIANA DISPROPORTIONALITY PROJECT

INTRODUCTION

The disproportionate representation of students of color in special education has been among the most long-standing and intractable problems in the field. Although the presence of minority overrepresentation has been consistently documented, it is fair to say that the full complexity of the problem has not yet been fully understood, nor has a clear picture emerged concerning the causes of disproportionality (National Research Council, 2002). Court challenges in the 1970's focused on the role of standardized testing in contributing to the overplacement of minorities in special education programs (*Larry P. v. Riles*, 1979; *PASE v. Hannon, 1980*), and one of those cases, *Larry P.* led to a ban on the use of intelligence tests in the state of California. To address the issue of disproportionate minority placement, the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA 97) stressed the importance of efforts to "prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities." In response to this mandate, the State of Indiana has for the last three years contracted with the Indiana Education Policy Center to recommend measures for assessing disproportionality at the local and state level, and to study variables that contribute to disparate minority placement in special education, as a guide to developing strategies for remediation in Indiana. The results from that intensive statewide analysis of minority disproportionality have both supported and extended the results of previous analyses, in particular the recent report of the National Research Council (2002). This report both summarizes those results, and places them in the context of the national discussion concerning the placement of minority students in special education.

Methodology

In response to federal reporting requirements, the Indiana Department of Education Division of Special Education contracted with the Indiana Education Policy Center to explore the extent of ethnic disproportionality in the state of Indiana, and to recommend a methodology for identifying those districts and school corporations with consistent evidence of disproportionality. The purpose of these analyses has been to provide a progressively more detailed description of the extent and character of disproportionality in the state of Indiana, and to increase our understanding of the causes of disproportionality in order to guide remediation efforts.

Data sources. Three data sets were used to describe special education enrollment across Indiana's 295 school corporations for the 1998-1999 and 2000-2001 school years: general student enrollment, disability category enrollment by ethnicity, and service setting (e.g., mainstream vs. separate class) by ethnicity. General enrollment figures for each school corporation in the state were obtained from the Indiana Department of Education website. Data for disability category and setting for each of Indiana's 295 school corporations were drawn from data collected and maintained by the Indiana Department of Education Division of Special Education.

Data analysis. The charge to the Policy Center from the state of Indiana was in part to develop a statistical methodology that could enable the state to identify school districts showing evidence of consistent minority disproportionality in special education programs. A variety of measures have been used to describe the representation of minority students in special education programs (MacMillan & Reschly, 1998; Oswald et al., 1999), but no single criterion has emerged as the standard for judging whether a given degree of enrollment in special education represents significant over- or under-representation for a given group.[1] Different methods of calculation can make the problem look more or less serious (Reschly, 1997), although the type of methodology used to test or describe disproportionality does not in and of itself appear to change the fact of differential placement of some groups (Skiba, Michael, Nardo, & Peterson, in press).

Based on a review of existing methodology, the Indiana Education Policy Center chose three criteria as a guideline for determining whether a given proportion of minority representation represents disproportionality at the local level: a) the P +/- 10% of P comparison of proportions first recommended by Chinn and Hughes (1987), b) a *two sample z-score test* that assesses statistical significance of discrepancies, a method that has been used as one criteria by the U. S. Office for Civil Rights, and c) case-by-case review in categories with less than 10 African Americans enrolled, in order to avoid undue influence of single cases. A more complete description of the methodology may be found in Appendix B.

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[1] A review of existing methodology for judging disproportionate representation may be found in Appendix B.

Results

Data were analyzed for the entire state of Indiana, the 1998-99 and 2000-2001 school years; results of those analyses have supported and extended the results of previous research. Analyses at the state level described disproportionate representation among all ethnic categories. Since the majority of that overrepresentation has been found among African American students, subsequent analyses at the local district level focused solely on the extent of disproportionate representation among African American students. Major findings across the two reports (Skiba et al., 2000; Skiba et al., 2001) are summarized below, placed within the context of the national discussion on disproportionality.

- **Disproportionality is most severe among African American students, especially in the disability categories of mental retardation and emotional disturbance.**

Results of this study have been consistent with national data (e.g., Chinn & Hughes, 1987; Harry & Anderson, 1994; Oswald et al., 1999; Robertson, Kushner, Starks, & Drescher, 1994) showing that minority students, especially African American students, tend to be the group most likely to be served in disproportionate numbers in special education, and that overrepresentation is most severe in the disability categories of mental retardation and emotional disturbance (see Appendix Table A1 in Appendix A).[2] Some previous investigations have also reported disproportionate representation of minority students in the category learning disabilities (Finn, 1982; Robertson et al., 1994), although less consistently. That inconsistency is reflected in the local district data in Indiana. In the 1998-99 school year, learning disabilities was the only disability category in which there was substantial evidence of both over-representation (in 6 of 66 special education planning districts) and underrepresentation (9 of 66 special education planning districts) for African American students in the category. Finally, the project found substantial evidence of minority *under*-representation in the category *communication disorder*, with African American students being underserved in that category relative to their proportion in the population in fully one third of all Indiana's special education planning districts.

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[2] In the interest of readability, all tables referenced in this paper may be found in Appendix A. Readers may also consult the original reports (Skiba et al., 2000, 2001) available on the web: www.indiana.edu/~safeschl/minor.htm.

- **African American students are underrepresented in regular classroom placements, and over-represented in more restrictive placements.**

Despite fairly extensive documentation of disproportionate minority placement in specific disability categories, the representation of minorities with respect to the continuum of services has not been extensively studied. Parrish (2000) reported that African American students were underrepresented in mainstream settings, and overrepresented in more restrictive placements, while Hosp and Reschly (2002) found no clear pattern linking racial disparities in placement with procedural issues in special education.

In Indiana, we found substantial evidence that African American students are under-represented in inclusive placements, and overrepresented in more restrictive placements. Across the state, African American students represent 12.34% of those served in special education; in terms of settings, however, they represent only 8.22% of students with disabilities served in general education settings, and 23.17% of students with disabilities in separate class placements (see Table A2 in Appendix A). Over one quarter of Indiana's special education planning districts showed significant underrepresentation of African Americans in the mainstream, and significant overrepresentation in separate class placements.

- **Disproportionality is not uniformly distributed, but appears to be due to the influence of significant disproportionate representation among a relatively small number of local administrative units.**

Relationships among variables that govern disproportionality appear to be complex (Coutinho & Oswald, 2000). Gaining an adequate understanding of the problem thus seems to require attention to progressively more detailed levels of analysis. For example, overall enrollment in special education in Indiana does not appear to show a great deal of evidence of minority disproportionality. This is likely due, however, to the fact that overrepresentation in some categories (e.g., emotional disability, mild mental handicap) tends to be counterbalanced by underrepresentation in others (e.g., communication disorders) when results are aggregated. Analyses may also need to become progressively more local. In the state of Indiana, for example, there are 66 special education planning districts cutting across 295 school corporations; thus many of the special education planning districts encompass more than one school corporation. When the focus of analysis shifts from the planning district to the corporation level, (see Appendix Table A3), it becomes apparent that problems of disproportionality are not uniformly distributed, even within those special education units showing evidence of disproportionate placement. Rather, problems of minority overrepresentation appear to be concentrated in 5% - 10% of Indiana's school corporations.

➢ **A number of possible causes of minority disproportionality in special education have been identified, but these relationships are not well investigated, and probably highly complex in their interactions.**

In order to better ground remediation efforts, the Indiana Disproportionality Project reviewed the available literature on variables that may be contributing to minority disproportionality in special education. Like the recent NRC report, we found support in the literature for three broad factors (Skiba et al., 2001):

- *Demographic Factors:* Demographic variables external to the school setting may contribute to minority disproportionality in special education. The socio-economic status of the child's family appears to be associated with special education placement (Yeargin-Alsopp, Drews, DeCoufle, & Murphy, 1995), but the influence of SES appears to be complex, and differs depending on disability category (Oswald et al., 1999).

- *Differential Educational Opportunity:* Racial and socioeconomic inequality in educational opportunity have been extensively documented in areas as diverse as tracking (Oakes, 1990), representation in curriculum (Sleeter & Grant, 1991), quality of instruction (Greenwood, Hart, Walker, & Risley, 1994), physical resources (Kozol, 1991), school discipline (Skiba, Michael, Nardo, & Peterson, in press) and school funding (Rebell, 1999). To the extent that such factors impair the educational experience for students of color, they can be expected to increase the susceptibility to referral for special education.

- *Referral and Placement Process:* Research on bias in standardized tests has tended to show that sources of bias in tests themselves are probably not sufficient to account for disparities in minority special education placement (Brown, Reynolds, & Whitaker,

> 1999). Yet there is substantial evidence that the process of special education referral and assessment makes a contribution to disproportionality. For example, minority students are referred by teachers at a higher rate than majority students, and more often for behavioral rather than academic reasons (Gottlieb, Gottlieb, & Trongone, 1991).

Current Data Collection: The Overriding Importance of Race

During the 2001-2002 academic year, the Disproportionality Project has intensified its efforts to better understand the factors that contribute to the disproportionate placement of African Americans in special education, conducting both an intensive case study in seven districts that have shown evidence of disproportionality, and a series of regression analyses testing the contribution of a variety of demographic variables to special education placement. Preliminary results point to an interesting paradox. Qualitative interviews of teachers, administrators, and related services personnel have found that, almost without exception, school personnel in districts with evidence of disproportionality attribute those disparities primarily to issues of socioeconomic class and to the disadvantages in educational preparation that covary with poverty status. Many explicitly stated that race was not the issue. Yet quantitative analyses of demographic data across the state paint a dramatically different picture (see Appendix Table A4). Across a number of disability categories and placements, logistic regression analyses yielded odds ratios indicating that African American students are up to two times as likely to be served by special education in the state of Indiana, *even when controlling for a number of district-level demographic variables, including socioeconomic status and academic achievement.* In other words, economic status and achievement do not appear to be sufficient for explaining racial disparities in special education. As the National Research Council (2002) report notes, such findings do not necessarily indicate the presence of bias, discrimination, or racism. They do however suggest that future work in both descriptive research and remediation must go well beyond the variables that have been typically called upon to account for racial disparities, in an attempt to understand why race continues to be such a predictor of inequity in American education.

CONCLUSIONS AND RECOMMENDATIONS

The fact of disproportionate representation of minority students in special education is well-established. But beyond that fact, the details of disproportionality and especially the causes of disproportionality are complex and not yet fully understood. There can be no doubt that it is time to fully address the issue of minority overrepresentation in special education, and to ensure equal educational opportunity for all students in both special and regular education. But given the complexity of the issue, it is also clear that solutions must be carefully planned and implemented, so as not to exacerbate the problem.

In particular, the problem of disproportionality will not be solved by setting arbitrary caps on special education enrollment for any group. If, as appears to be the case, some subgroups of students need more support, a simple denial of service to some proportion of those groups will further disadvantage the very students that attention to disproportionality is intended to help. Rather, addressing and eventually remediating disproportionate placement must involve a comprehensive self-assessment process at the local level that seeks to understand both the fact and the meaning of disproportionality. The following recommendations flow from the findings of the Indiana Disproportionality Project and from previous investigations:

- **Improve and Standardize Data Collection**. Current inconsistencies in the reporting and interpretation of data on minority enrollment and disproportionality can create confusion, especially at the local level. A standardized method of collecting and reporting data on disproportionate representation could provide LEA's and SEA's with a benchmark for charting progress toward more equitable special education placement rates.
- **Implement Early Identification and Intervention Procedures.** Current practices in referral and assessment often require that a student fail before identification; in the case of serious emotional disturbance, waiting until the disorder has become thus entrenched may make remediation difficult or impossible (Kauffman, 1999). Early screening methods are available for detecting emotional and behavioral problems; the National Research Council (2002) recommends universal application of such procedures in the early grades along with plans for early intervention for students thus identified.

- **Provide increased resources at the building level to address the diversity of student needs.** To the extent that schools and teachers have inadequate resources for addressing the increasing diversity of their students, they will seek to refer those students for special services (Gerber & Semmel, 1984). Special educational roles and responsibilities can be restructured to provide additional support to classroom teachers, including:
    - *Improved training of both special and general educators in culturally competent instructional and behavioral methods.* University training programs should include in their training programs for *all teachers:* a) instruction in effective behavior management strategies for both classroom and non-instructional school settings, b) methods for effectively intervening for students who are struggling, and c) methods for culturally responsive instruction and classroom management.
    - *Increased support by school psychologists and special education teachers.* School psychologists and special education teachers who have been trained in methods of direct observation, classroom management, and consultation can be a valuable resource for consultation on individual and classroom problems, to prevent classroom problems from becoming special education referrals.
    - *Improve the presence and efficacy of pre-referral teams.* Pre-referral intervention teams represent a promising strategy for reducing inappropriate referral (Hoover & Collier, 1991), but the presence and especially the adequacy of pre-referral intervention is currently highly variable (Flugum & Reschly, 1994). All school personnel should be trained in effective pre-referral teaming strategies, and the efficacy of those teams in reducing inappropriate referrals monitored.
- **Monitor the progress of students in special education toward reintegration into the regular curriculum.** Reschly (1997) has noted that overrepresentation in special education is a problem only if we cannot be assured of the effectiveness of special education placement. A number of outcome indicators might be used to assess the adequacy of remedial programming. How well are minority students meeting their IEP goals? What proportion of ethnic minority students are decertified from special education, and how quickly? Do special and remedial education programs appear to have a positive influence on the dropout or graduation rates of minority students?

- **Implement low inference assessment strategies.** There is increasing movement toward the use of direct measurement approaches that reduce the level of inference involved in assessment (Shapiro, 2000). These approaches, such as curriculum-based measurement (Shinn, 1995) and functional assessment (Lane, Umbreit, & Beebe-Frankenberger, 1999) tend to shift the focus of assessment from labeling and placement toward the design and evaluation of remediation. Such information better meets the requirements of special education law, by using data-based estimates of current educational needs to plan and evaluate educational and behavioral interventions.

The disproportionate placement of minority students in special education remains a serious and unresolved problem. It is important to note that minority disproportionality among students with disabilities is not an isolated phenomenon confined to special education, but might well be seen as part of a complex of factors that describe a general pattern of disadvantage for certain groups in both education and society. African American and Hispanic children and youth are exposed from an early age to higher levels of environmental stressors (Polednak, 1996) and those same students are exposed to educational systems that fail to provide them with adequate educational opportunities (National Research Council, 2002). Thus, full remediation of the problem of minority disproportionality in special education may well require attention to a host of factors throughout our educational system that continue to disadvantage and disenfranchise minority students. It will not be a simple or straightforward task to fully understand, much less effectively address, the complexity of educational inequity. Nevertheless, these and previous findings support efforts at the federal, state and local level that are commensurate with the importance of the issue, toward the goal of equal educational opportunity for all students in general and special education.

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APPENDIX A

TABLES

NOTE: Reference to the original reports from which these tables were drawn can be found in the footnote to each table.

Table A1. Breakdown by Ethnic Group within Special Education Disability Categories, State of Indiana, 1998-99 and 2000-01 School Year[a]

Disability Category	White, non-Hispanic		African American		Hispanic		Asian		American Indian		Multiracial	
	1998-99	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*
MD[b]	87.39%	85.41%	9.10%	9.73%	2.41%	2.79%	0.66%	0.72%	0.11%	0.18%	0.33%	1.17%
OI	91.30%	89.99%	5.58%	5.74%	1.72%	2.72%	0.90%	0.96%	0.00%	0.15%	0.49%	0.44%
VI	86.45%	86.12%	10.54%	10.92%	2.17%	2.34%	0.50%	0.16%	0.17%	**0.31%**	0.17%	0.16%
HI	87.05%	85.32%	9.36%	9.52%	2.10%	2.86%	0.67%	0.95%	0.07%	0.20%	0.75%	1.16%
EDFT	75.85%	75.17%	**[illegible]**	**[illegible]**	1.24%	1.41%	0.20%	0.13%	0.12%	**0.26%**	0.94%	1.23%
EDAO	88.55%	86.12%	9.77%	11.30%	0.82%	1.02%	0.14%	0.18%	0.16%	0.12%	0.57%	1.26%
LD	87.55%	86.29%	9.89%	10.20%	1.71%	2.23%	0.15%	0.19%	0.18%	0.19%	0.52%	0.90%
CD	90.07%	89.27%	7.35%	7.37%	1.55%	2.02%	0.36%	0.34%	0.08%	0.13%	0.59%	0.87%
MiMD	68.28%	66.46%	**[illegible]**	**[illegible]**	2.07%	2.44%	0.28%	0.25%	0.18%	0.20%	0.52%	0.94%
MoMD	75.91%	75.50%	**[illegible]**	**[illegible]**	2.53%	3.02%	0.58%	0.48%	0.15%	0.23%	0.76%	1.16%
SMD	80.47%	77.82%	**14.39%**	**16.11%**	**3.40%**	3.77%	0.68%	0.84%	**0.29%**	**0.42%**	0.78%	1.05%
DB	84.62%	80.00%	11.54%	**15.00%**	0.00%	0.00%	**3.85%**	**5.00%**	0.00%	0.00%	0.00%	0.00%
AUT	86.82%	86.54%	10.95%	10.21%	0.96%	1.38%	0.54%	0.61%	0.00%	0.04%	0.72%	1.22%
TBI	87.72%	85.98%	9.27%	10.04%	2.51%	2.51%	0.50%	0.63%	0.00%	0.21%	0.00%	0.63%
OHI	92.09%	90.13%	5.82%	6.90%	0.91%	0.93%	0.27%	0.41%	**[illegible]**	0.19%	0.59%	1.43%
Proportion in School Population	**83.89%**	**82.35%**	**11.24%**	**11.50%**	**2.79%**	**3.46%**	**0.87%**	**0.97%**	**0.19%**	**0.21%**	**1.01%**	**1.52%**

[a] Figures represent the percentage of total individuals in a given category represented by a given ethnic group. Thus percentages for a given year will sum to 100% across columns. The proportion that each ethnic group represents in the total school population of Indiana for a given year is presented in the final row for comparison purposes. Percentages in bold indicate overrepresentation according to Chinn & Hughes' (1987) *"P + 10% of P"* criterion.

[b] Key to disability categories for Indiana under Indiana Article 7 (June, 2000):
MD = Multiple Disability
OI = Orthopedic Impairment
VI = Visually Impairment
HI = Hearing Impairment
EDFT = Emotional Disability Full Time Service
EDFT = Emotional Disability All Other
LD = Learning Disabled
CD = Communication Disorder
MiMD = Mildly Mental Disability
MoMD = Moderate Mental Disability
SMD = Severe Mental Disability
DB = Deaf Blind
AUT = Autism Spectrum Disorder
TBI = Traumatic Brain Injury
OHI = Other Health Impairment

NOTE: Table is drawn from Skiba, R. J., Wu, T.C., Kohler, K., Chung, C. G., & Simmons, A. (2001). *Disproportionality and discipline among Indiana's students with disabilities: A status report.* Bloomington, IN: Indiana Education Policy Center. (Original Table 2c)

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Table A2. Distribution of Students in Indiana Special Education Placements by Ethnic Group, 1998-99 and 2000-01 School Years[a]

Placement Type	White, non-Hispanic		African American		Hispanic		Asian		American Indian		Multiracial	
	1998-99	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*	*1998-99*	*2000-01*
Regular Class	89.51%	87.88%	8.22%	8.96%	1.32%	1.79%	0.27%	0.29%	0.12%	0.14%	0.56%	0.94%
Resource Room	86.16%	84.78%	11.13%	11.70%	1.74%	2.12%	0.20%	0.22%	0.18%	**0.25%**	0.58%	0.94%
Separate Class	73.06%	72.30%	**23.39%**	**23.17%**	2.53%	3.03%	0.30%	0.33%	0.18%	0.20%	0.59%	0.98%
Public Separate School Facility	83.03%	80.21%	**14.33%**	**16.67%**	2.14%	2.20%	0.16%	0.15%	0.00%	**0.29%**	0.33%	0.59%
Private Separate School Facility	58.33%	79.51%	**41.67%** (n=3)	**16.39%** (n=20)	0.00%	3.28%	0.00%	0.00%	0.00%	**0.82%**	0.00%	0.00%
Public Residential Facility	78.57%	78.95%	**18.18%** (n=28)	**19.75%** (n=30)	1.30%	1.58%	0.00%	0.00%	**0.65%**	0.00%	**1.30%**	**3.68%**
Private Residential Facility	88.74%	81.08%	7.77%	**15.14%**	1.88%	1.44%	0.80%	0.36%	0.00%	**0.90%**	0.80%	1.08%
Homebound/ Hospital	82.17%	80.23%	**15.03%**	**16.58%**	2.62%	1.51%	0.00%	0.50%	0.00%	0.17%	0.17%	1.01%
Proportion in School Population	83.89%	82.35%	11.24%	11.50%	2.79%	3.46%	0.87%	0.97%	0.19%	0.21%	1.01%	1.52%

[a] Figures represent the percentage of total individuals in a given category represented by a given ethnic group. Thus percentages for a given year will sum to 100% across columns. The proportion that each ethnic group represents in the total school population of Indiana for a given year is presented in the final row for comparison purposes. Percentages in bold indicate overrepresentation according to Chinn & Hughes' (1987) *"P + 10% of P"* criterion.

NOTE: Table is drawn from Skiba, R. J., Wu, T.C., Kohler, K., Chung, C. G., & Simmons, A. (2001). *Disproportionality and discipline among Indiana's students with disabilities: A status report.* Bloomington, IN: Indiana Education Policy Center. (Original Table 2e)

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Table A3. Summary of Planning Districts/School Corporations across Indiana Special Education Disability Categories and Placements with Significant Overrepresentation for African American Students, 2000-01 School Year[a]

Disability Categories	# of Planning Districts with African American Overrepresentation[b] (A)	% of Planning Districts Exhibiting Overrepresentation (B)	# of School Corporations with African American Overrepresentation[c] (C)	% of School Corporations Exhibiting Overrepresentation (D)
Overall	9	13.64%	15	5.08%
MiMD[d]	24	36.36%	28	9.49%
MoMD	3	4.55%	4	1.36%
EDFT	9	13.64%	9	3.05%
EDAO	1	1.52%	0	0.00%
CD - (UNDER)[e]	19	28.79%	19	6.44%
SMD	0	0.00%	0	0.00%
MD	1	1.52%	1	0.34%
OI	0	0.00%	0	0.00%
VI	0	0.00%	0	0.00%
HI	0	0.00%	1	0.34%
LD	9	13.64%	10	3.39%
DB	0	0.00%	0	0.00%
AUT	0	0.00%	0	0.00%
TBI	0	0.00%	0	0.00%
OHI	0	0.00%	0	0.00%

Placement Types	# of Planning Districts with African American Overrepresentation	% of Planning Districts Exhibiting Overrepresentation	# of School Corporations with African American Overrepresentation	% of School Corporations Exhibiting Overrepresentation
Regular Class – (UNDER)[e]	19	28.79%	19	6.44%
Resource Room	16	24.24%	15	5.08%
Separate Class	19	28.79%	20	6.78%
Public Separate School Facility	1	1.52%	0	0.00%
Private Separate School Facility	0	0.00%	0	0.00%
Public Residential Facility	0	0.00%	0	0.00%
Private Residential Facility	1	1.52%	1	0.34%
Homebound/Hospital	1	1.52%	1	0.34%

[a] Significant disproportionality determined using criteria described in method section and Appendix B.

[b] Columns A & B represent the number and percentage, respectively, of Indiana's 66 special education planning districts that exhibited significant disproportionality.

[c] Columns C & D represent the number and percentage, respectively, of Indiana's 295 school corporations that exhibited significant disproportionality. Note that although the frequencies in Columns A & C are often similar, the percentage in Column D is much smaller than that in Column B, due to the larger number of corporations

[d] Key to Indiana's disability categories may be found in Appendix Table A1.

[e] Note that all of the districts in these categories (Communication Disorder and Regular Classroom) evidenced significant *under*representation of African American students in that category.

NOTE: Original Table may be found in Skiba et al (2001) as Table 2g.

Table A4. Contribution of Status as African American to Placement in Special Education, After Controlling for Demographic Variables across Indiana Special Education Disability Categories and Placements, 2000-01 School Year[a]

	Odds Ratio[b]	Chi-Square	Associated Probability
EDFT	1.348	69.1104	<.0001
MiMD	2.348	1528.4622	<.0001
MoMD	1.162	8.3551	0.0038
CD	0.605	483.4714	<.0001
LD	0.870	76.4863	<.0001
Reg. Class	0.711	560.5086	<.0001
Sep. Class	1.522	589.2053	<.0001

[a] The probability of being in special education was the dependent measure in a series of logistic regressions conducted for each of the disability categories.
Independent variables for each analysis were: Ethnicity (African American vs. Non African American), % students free lunch eligible, total expenditure per pupil, student/teacher ratio, % students above Math and English standard, average teacher salary, grades 6-12 dropout rate, and the rate of suspension and expulsion. All variables were school corporation totals or averages, with the exception of ethnicity and special education status, which were corporation totals weighted by the number of students in the corporation.

[b] The odds ratio can be interpreted in terms of the likelihood of the target group being at-risk for the variable relative to the index group (in this case, all other students), when controlling for the other demographic variables in the logistic regression equation. Thus, in the category Mild Mental Disability, African American students are 2.3 times as likely as other students in the state of Indiana to be in special education even when the other demographic variables are statistically controlled. Note that numbers greater than 1 represent an increased probability, while numbers less than 1 indicate a decreased probability. Thus African American students were less likely to be served as communication disordered or learning disabled when controlling for other variables, and less likely to be served in general education classrooms.

[c] Key to disability categories and placements under Indiana Article 7:

EDFT = Emotional Disability Full Time Service
MiMD = Mildly Mental Disability
MoMD = Moderate Mental Disability
CD = Communication Disorder
LD = Learning Disabled
Reg. Class = Students served in general education settings
Sep. Class = Students served in self-contained classrooms

APPENDIX B

NOTES ON THE STATISTICS USED IN ANALYSES BY THE INDIANA DISPROPORTIONALITY PROJECT

THE IMPORTANCE OF METHODOLOGY

Findings of minority disproportionality in special education have been widespread and consistent. Unfortunately, criteria used to determine disproportionality have not been as consistent. Criteria used to assess disproportionality in special education have varied widely (Macmillan & Reschly, 1998; Reschly, 1997). Differing definitions of disproportionality, differing data sources, and differing methods to assess over- or underrepresentation tend to generate confusion in the field (Oswald, Coutinho, Best, & Singh, 1999).

Saying that questions concerning statistical methodology are uninteresting for most of us is a bit of an understatement. But in examining minority overrepresentation, those questions are of primary importance, since methodology determines how we interpret disproportionality data. When we discover a difference in the rate of special education service, we determine that the difference is meaningful and reliable by applying some statistical criteria. A consistent and accepted standard enables us to have confidence that a measured difference is real, and thus requires remediation. Without such a consistent measure, it may be more difficult for state departments of education to justify decisions and recommendations based on disproportionality data.

How shall we determine whether a given discrepancy is evidence of minority disproportionality? A wide variety of criteria have been used. The following sections briefly review some of the approaches that have been used to ascertain that a difference between general enrollment percentages and special education enrollment percentages is significant.

Straight percentage. One method that might be used is simply to subtract the general enrollment percentages from the special education enrollment percentage, using some criteria, say 10%, as a cutoff for determining overrepresentation. Thus, if African Americans constituted 15% of the enrollment in a given district, we would consider an African American special education enrollment disproportionate if it exceeded 25% (Jeschke, 1997; Reschly, 1997). Such an approach is highly arbitrary however, and especially problematic with high or low base enrollment figures. If for instance, African Americans exceeded 90% of the population in a given district, there could never be overrepresentation using a simple percentage criterion. At the other end of the scale, it is also unlikely that a group that constitutes only 3% of the population will represent 13% or more of the special education population.

Percentage of population proportion. A more useful approach that avoids some of the problems of straight percentage is to use as a cutoff a certain proportion of the representation of the group in the population. Consider that African American students comprise 20% of a district's general enrollment. If we use a criterion of 10% of population proportion, the acceptable range for African American special education enrollment ranges from 18%-22% (20% ± 2%). First suggested by Chinn and Hughes (1987), such an approach has been cited and used by a number of researchers and school districts (Harry, 1994; Lara, 1994; Reschly, 1997; Russo & Talbert-Johnson, 1997).

The use of a proportion of the population measure represents an improvement over straight percentages. Unfortunately, it may still be oversensitive in districts with low enrollments of a minority group. For instance, if African Americans constitute 60% of a given district, the acceptable range of representation in special education is from 54% to 66% (60% ± 6%). For a district with only 4% African American enrollment however, the acceptable values for African American enrollment in special education range from 3.6% to 4.4%, a much more narrow and stringent standard. The criterion is also rather arbitrary. In any studies using the 10% criteria (or a similar 20% of population proportion criteria, see Reschly, 1997), there is no particular rationale offered for that particular value.

Inferential Statistics.

In order to control for some of the issues regarding sample size and proportional differences, inferential statistics have been applied to determine when a given discrepancy represents overrepresentation. Inferential statistics for proportions (Fleiss, 1981) are based on the idea of a sampling distribution. That is, one assumes that the observed sample is one of an infinite number of samples that might be drawn from a larger population. Inferential statistics answer the question: "Given a discrepancy of this magnitude, what is the probability that we find this size difference simply by chance when in fact there is no difference in the population?" Among the most common inferential statistics that have been used to test minority disproportionality are *chi-square* (Horner, Maddux, & Green, 1986) and *z* scores (Jones, Sacks, & Bennett, 1985; Markowitz, 1996). By including the number of students in the sample and/or population and the test for proportions in the statistical formula , inferential statistics better control for sample size. Statistical measures also allow probability statements regarding disproportionality. The statement that a given difference is significant at $p < .01$ is simply saying that the chances of disproportionality this great occurring simply by chance are less than 1 in 100 when in fact there is no difference in the population. One of the more widely-reported and influential statistical measures of minority disproportionality has been the California *E-formula* (Reschly, 1997; Wright & Cruz, 1983). Used by the courts in *Larry P. v. Riles*; the *E-formula* is simply a less stringent variant of the *z-test*. Two such measures, the *z-test* and *chi-square* are used by the U.S. Department of Education Office for Civil Rights as criteria in its investigations of minority disproportionality in school districts throughout the country (J. Turnbull, Senior Equal Opportunity Specialist, OCR, personal communication, April 6, August 23, & August 24, 2000).

The Use of Inferential Statistics

The statistical approach used in determining significant disproportionality in this report is not highly complex, from a standpoint of statistical theory. Yet in order to understand the rationale for the choices made regarding various statistics, it is necessary to provide some background regarding the theory of inferential statistics, and in particular sampling theory. This section is intended as a more detailed description of the statistical procedures used in this report for readers that may be interested.

In order to develop the rationale for the statistical choices made herein, we will present the data from a hypothetical planning district. Suppose that in District A, African American students represent 10% of the general enrollment population, but 15% of students identified as MiMH. Does this 5% difference between general enrollment and enrollment in special education represent a real, or significant, difference? In the language of inferential statistics, the question is framed as, "What is the probability that the difference of 5% between general enrollment and MiMH enrollment observed in District A could occur simply by chance when in fact there is no difference in the population?" In the following sections we will how explore a *z*-test of proportions can be used to answer that question, how such tests can be calculated, and the two different types of *z*-tests that might be used. We will then discuss other alternatives, such as the E-formula or Chi-square, that have been used to determine disproportionality. Finally we will close with a discussion of the special problems caused by small sample sizes.

Z-Test of Proportions

The *z*-test is among the simplest of inferential statistics, and is based on the notion of a *sampling distribution*. That is, when we observe different proportions of students in different categories, we are observing a sample. This sample is only one of an infinite number of samples that might have been drawn, and each one probably contains a certain amount of error; for example, those answering the survey may have made a wrong entry, or may have misunderstood the questions. Inferential statistics assumes that if we took an infinite number of these samples, each containing some error, they would together approximate the true results without any error. The question posed when using the *z*-test is then, "How likely it is that the result we have obtained in a given sample is representative of the *true* population?"

The results of the *z*-test are standardized, expressed as a *z* score that represents a certain number of standard deviations (a measure of variability) around a mean of zero. Since the population of all possible results we might have obtained can be represented by a normal curve, each *z* score is associated with a certain percentage of the population under a normal curve with a mean of 0 and a standard deviation of 1. For example, a *z* score of 1 describes the upper 16% of the population, while a *z* score of 1.96 is associated with the upper 2.5% of the population.

These proportions of the hypothetical population can be regarded as the basis for probability statements. That is, if the disproportionality we observed in MiMH classes in District A is associated with a *z* score of 1.96 or larger, since that represents 5% of the normal curve population, we state that the chances are less than 5 in 100 ($p<.05$) that our sample was this discrepant simply by chance when in fact there is no difference in population. This level of probability, $p < .05$, is the one most often associated with statistical significance. Thus, we conclude that it is very likely that this discrepancy really is evidence of significant disproportionality. As *z* scores increase in size in either direction from a mean of 0, the associated probability of a difference this large also decreases. Thus a *z* score of 3.29 means that there is a likelihood of only one in a thousand ($p<.001$) that a discrepancy this great could have occurred solely by chance when in fact there is no difference in the population.

One Sample vs. Two Sample Tests

There are two possible ways that we might conceptualize a z-test; these are termed a *one-sample* and a *two-sample* test. In a one-sample test, we compare the sample that we have to a hypothetical population; thus there is only one sample tested. The two-sample test, in contrast, compares one sample to another sample. The two approaches will be described below.

The one-sample z-test. The one sample z-test compares the sample to a hypothetical population, and divides that by the standard error, a measure of variability:

$$Z = \frac{P - \pi_0}{Std.Error}$$

Here, P the proportion of the sample possessing the characteristic under study (in this case proportion of MiMH students who are African American), and B(reads "Pi") the underlying unknown proportion in the population who possess that characteristic. In other words, B is the true but unknown proportion of African American MiMH students in the district. Since we do not know what is the "true" proportion of African American MiMH students, we must estimate that by using the proportion of all students who are African American in this district (e.g. 10%). (Thus, we are assuming that the true estimate of proportion of MiMH students who are African American is equal to the proportion of all students who are African American in District A.)

To complete the test, we must calculate the standard error in the denominator. For the one-sample test, this is calculated as

$$Std.\,Error = \sqrt{\frac{\pi_0(1-\pi_0)}{n}}$$

where n is the total number of MiMH students in the special education district, and B is again the "true" proportion of African American MiMH students (assumed equal to the proportion of all students who are African American).

If there are 200 MiMH students in District A with 15% of African American MiMH students, one can apply the z-test using the above formulas and arrive at a *z* score of 2.357. Remember that a *z* score of 1.96 was associated with a probability of $p < .05$. Since our obtained *z* score of 2.357 is greater than 1.96, we conclude that the chances of disproportionality this great are less than 5 in 100 when in fact there is no difference in the population. Thus, we determine that the 5% difference between the general education and MiMH African American enrollment is significant.

The two-sample z-test. The one-sample test thus makes the theoretical assumption that we can test our sample result against the population proportion. We may not always feel comfortable, however, assuming that we can find a good approximation of a population value. In such a case, we turn to a two-sample test, in which we test one sample against another. The formula for the two sample z-test is

$$Z = \frac{P_1 - P_2}{Std.\,Error}$$

where P_1 is the sample proportion of African American students among MiMH students and P_2 is the sample proportion of African American students among students not identified as MiMH in the district. Note that the statistic is based on the difference between these two sample proportions.

It is important to note that the hypothesis being tested with the two sample *z*-test still has to do with the presumed underlying populations. In a two-sample approach, however, we are not making a hypothesis concerning the value of population proportions but instead hypothesize concerning the *difference* of two population proportions. Our statistical question for this test might be stated: "We have a sample observation of the proportion of African-American students in MiMH programs, and a similar figure for African-Americans who are not labeled MiMH. We assume both samples come from larger populations. When we compute the difference in African-American representation between the MiMH and non-MiMH samples, is that difference likely to occur if in fact the two corresponding population proportions are the same?"

Again, the size of the difference is tested using the standard error. The standard error of the sampling distribution of difference of two proportions is:

$$Std.\,Error = \sqrt{\frac{P(1-P)}{n_1} + \frac{P(1-P)}{n_2}}$$

where P is the proportion of general enrollment represented by African Americans, n_1 is the total number of MiMH students and n_2 is the total number of non-MiMH students in the district.

The magnitude of the *z* score that we compute is again used to decide how likely the discrepancies we observe are to occur simply by chance. Relying on the same statistical principle used in the one-sample approach, the chances are 95 percent that we would observe a sample difference within ±1.96 standard errors around zero. Thus a *z* score greater than 1.96 has a probability less than .05, or 5 chances in 100 when in fact there is no difference in the population. The larger the *z* score, the more likely we are to reject the hypothesis that our obtained results are simply sampling error, and to conclude that the discrepancy we observe represents a real (i.e., significant) difference.

In order to apply this *z*-test to our example, District A, assume that we have the following distribution of MiMH and non-MiMH African American.

	African American	Non-African American	Total
MiMH	30	170	200
Non-MiMH	170	1,630	1,800
Total	200	1,800	2,000

In this table, we see that the proportion of African American students with MiMH (P_1) is 15%(=30/200), the proportion of non-African American students with MiMH is (P_2) is 9.4 %(=170/1800), the total number of students with MiMH (n_1) is 200 and the total number of students not labeled MiMH (n_2) is 1,800 with African American students represent 10% of the general enrollment (p). The observed difference between the two sample proportions is thus 5.6 percentage points. Is this large enough to claim that two population proportions are not the same? Using the figures above to compute a two sample *z*-test yields a *z* score value of 2.4845. Since this is greater than 1.96, one would reject the null hypothesis that there is no difference between the samples, in favor of a conclusion that the two samples have not come from the same proportions. In other words, the likelihood of a discrepancy this large when in fact they are the same is less than 5 in 100.

Which z-test is appropriate? Thus, we have two alternate choices in applying a *z*-test, a one-sample approach comparing our sample to a population, and a two-sample approach comparing two samples. The decision is to some extent a judgment call, depending on the assumptions one is willing to make about underlying population values. For purposes of this report, we have chosen to use the two sample *z*-test, for two reasons. First, for the one sample test, we use general enrollment figures as the estimate for what the actual population value of (for example) MiMH representation would be if that was available. Although this is a reasonable assumption, it makes more sense to use the two sample approach that explicitly compares the MiMH sample (as a representative of that population) with the non-MiMH sample (as a representative of that population). Second, it is not clear that the general enrollment figures we have available, even at a statewide level, represent a population from the standpoint of inferential statistics. Although we expect the general statewide or districtwide enrollment to be the entire student population at a given moment in time, the figures probably vary to some extent across time. For example, students may move in and out of disability categories, or the ethnicity or disability label of a given student may have been mis-entered. Thus, the general enrollment figures for a given year, even at the statewide level, may be regarded as one sample out of many that might have been drawn from the population of all possible enrollment observations across a given school year. Thus, we have chosen to use a two sample *z*-test for this report.

California E-Formula

The California E-formula is a variant of the one sample *z*-test. Arguably the most influential of statistical measures of disproportionality, the E-formula was used by the court in *Larry P. v. Riles* to show disproportional rates of placement of African American students in California's special education programs (Reschly, 1997; Wright & Cruz, 1983). The formula is an interval estimation method that determines disproportionality if the target group exceeds the population value by one standard error of measurement:

$$E = \pi_0 + Std.Error = \pi_0 + 1 \times Std.Error$$

Where B is the "true" proportion of students who are African American in a given category (i.e., MiMH) which is estimated by the proportion of general school enrollment represented by African Americans. The standard error for the E-formula is computed as in the same way explained as in one-sample approach section earlier:

$$Std.Error = \sqrt{\frac{\pi_0(1-\pi_0)}{n}}$$

where n is the total number of students in the special education category and B_0 is the proportion of African American students in general enrollment population in the district. Thus *E* sets the criterion for determining overrepresentation at a level one standard error above the population estimate. If the African American proportion of enrollment in a given category exceeds *E*, we conclude that there is evidence of disproportionality.

It can be shown that the *E*-formula is simply a form of the one-sample *z*-test. Note that in the E-formula above, we have added a **1** in the final transformation, to show that the E-formula is using one standard deviation as the criteria for determining standard deviation. If one were to replace that **1** with **1.96**:

$$E = \pi_0 + 1.96 \times Std.Error$$

the formula gives the same results as a one-sample *z*-test, with an associated probability of $p <$ .05. Since the *z* score associated with the E formula is smaller, however, this means that the E-formula is actually less stringent in finding disproportionality than the *z*-test. While the 1.96 standard deviation figure associated with the *z*-test has a probability of 5 chances in 100 when in fact there is no difference in the population., the area of the normal curve, 68%, associated with 1 standard deviation is considerably smaller. This means that there are 32 chances in 100 ($p < .32$) when in fact there is no difference in the population, that our results could be the result of sampling error.

For these reasons, we chose not to use the E-formula in calculations for this report. First, the formula is less conservative, meaning that some districts may be unfairly targeted for fairly low levels of discrepancy. Second, and perhaps more important, the E-formula is associated with an unacceptably high level of error. The probability that the finding of disproportionality could be in error for the E-formula (32 chances out of 100 when in fact there is no difference in the population) is simply too great to place confidence in.

Chi-Square Statistic

Some researchers have used the Π^2(reads "Chi-square") statistic (Horner, Maddux, & Green, 1986) to test disproportionality. The Chi-square statistic is based on a two by two contingency table and tests if a dependency exists between two variables (i.e., race and disability). Thus the question we are asking is: "To what extent are the variables race and disability dependent, that is, is placement in special education dependent on ethnicity?"

To apply this test to our example, assume the same numbers in the table used in two-sample section above.

	African American	Non-African American	Total
MiMH	30	170	200
Non-MiMH	170	1,630	1,800
Total	200	1,800	2,000

In the Chi-square approach, this table is referred as contingency table. Based on the margins (the Total row and column), we compute "expected" numbers for each cell if indeed race and disability were totally independent of one another. These are then compared to the observed values in each cell. For our hypothetical District A, MiMH students represent 10% (200/2000) of the total population of all students. If ethnicity and disability are totally independent, we would expect the number of African American MiMH to also be 10%, or 20, of the 200 MiMH students. In fact, the actual number of MiMH students who are African American is 30, 10 more than expected. To test the significance, we apply the statistical formula for Chi-square:

$$\chi^2 = \sum_{i=1}^{2}\sum_{j=1}^{2}\frac{(O_{ij} - E_{ij})^2}{E_{ij}}$$

where O_{ij} is actual number and E_{ij} is expected number in each of the four cells. We square the difference we found above (10) to get 100 ($=10^2$) and divide the squared value by our expected value, $5\left(=\frac{(30-20)^2}{20}\right)$. We do the same thing for all three other remaining cells and sum up all four resulting quantities. The final value of this computation, Chi-square, is a ratio representing the extent to which our observed proportions reflect our expected proportions, given a hypothesis that race and disability are totally independent.

The more the rows and columns, representing our two variables of race and disability, are independent, the closer the observed and expected numbers in each cell, and thus the smaller the Chi-square value will be. In contrast, a large Chi-square suggests that placement in special education is to some degree dependent upon ethnic status. Again, the question "how large is large enough?" can be tested as a probability statement. For a two-by-two contingency table, the 95% confidence level (5 chances in 100 when in fact there is no difference in the population) for Chi-square is 3.84. If the computed Chi-square is greater than this threshold value, we reject the hypothesis of no dependence in favor of a hypothesis that special education placement is to some degree dependent on race, implying the presence of disproportionality. For District A, the calculated value of Chi-square based on the contingency table above is 6.17, suggesting that for this district, special education placement is dependent upon race at a level exceeding chance.

The Chi-square statistic gives somewhat less information than the *z*-test. Since the Chi-square statistic is a formula that requires squaring differences, we lose information about the sign of the difference. That is, while *z* scores can be either positive or negative, signifying over- or under-representation, Chi-square gives us a positive value that simply indicates the presence of dependence (or disproportionality), not whether that is over- or underrepresentation. It is also possible to show, however, that the Chi-square statistic is simply the squared value of our two-sample *z* score. In our example, for District A, our two sample *z* score for these data was 2.4845, thus our Chi-square of $6.17=2.4845^2$. Since the two approaches are exactly equivalent, with the exception that the *z* score provides additional information about the direction of disproportionality, we elected to report only the *z*-test results in the main body of the report.

The Chi-square statistic does yield one additional useful piece of information in the process of calculation, however. As noted above, the statistic uses marginal frequencies to obtain an expected value for each cell. This expected value might be useful in reporting results to individual districts for remediation. For example, in District A, the expected number of African Americans in classes for students with MiMH is 20, 10 less than the observed value. This figure might well be viewed as a target figure for administrators in District A to shoot for as they begin remediation efforts. Thus, both observed and expected figures drawn from the Chi-square calculations are provided for each disability category and placement in Appendix A3.

Additional Decision Criterion: Small Sample Size

In this report, the two-sample *z*-test and the Chinn and Hughes P ± 10% of P criteria were the primary criteria that emerged in determining disproportionality. It is important to note one additional criterion that emerged regarding small samples. Even when disproportionality is apparent in a special education district using both the *z*-test and the Chinn and Hughes criterion, the small number of students involved in the particular category or placement can lead to unrealistic judgments of disproportionality. Let's take an example from this year's data. In one district, there were a total of 15,511 students enrolled, of which 107 were African American. The total number of MiMH students in the district was 350 and its African American count was 6. African American students thus represented 0.69% of total enrollment and 1.71% of enrollment in MiMH programs. Using the two sample *z*-test, these figures result in a *z* score value of 2.34, significant at the .05 level. The proportion of MiMH students who are African American in this district is 1.71%, which is greater than 0.76%, the upper limit of the P ± 10% of P criterion. Thus it appears that, using both criteria, this district has a problem of minority overrepresentation in MiMH classes. But numbers may pose a problem in this case. In the above example, what if the district were to reduce the numbers of African American MiMH students by one, to five students? Keeping the total African American enrollment constant at 107, this new number yields a *z* score value of 1.69. This value is not significant and would lead to a judgment of no disproportionality, based on a single student.

This issue is particularly problematic in districts with a very small proportion of African American students in a given category or program. In order to avoid this level of sensitivity in decision-making, we deliberately excluded districts with less than 10 African American students in a given disability category or placement type from decisions concerning over or under-representation. Inspection of the tables in Appendix A may be used to explore disproportionality for such districts on a case-by-case basis. As noted in text, if there are only three African American students in a district and all three are placed in special education, there may be cause for concern, regardless of the applicability of statistical procedures.

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